

Santee Cooper board: Did it overstep its bounds?

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James W. Sanders Sr., a Baptist pastor, doesn't speak much when he takes his director's seat on the Santee Cooper board once a month.

The elderly man leads his fellow board members in an invocation, casts a vote once in a while and fields some playful ribbing about "putting in a good word upstairs" from the utility's executives. But a week ago, as directors argued over a Senate subcommittee investigation detailing possible mismanagement by many of the board's members, Sanders quelled the group's bickering with a stern and solemn voice seldom heard away from his pulpit in Gaffney.

"Ain't no such thing as something just affecting one of us," Sanders warned.

"We've got to move forward with unity among us."

The arguing quickly resumed and even escalated, but for a few brief moments, the nine embattled directors listened closely as they received their scolding.

PLAGUED BY UNCERTAINTY

Being on a board of directors sounds like an easy proposition, based on two overarching principles called the "duty of care" and the "duty of loyalty."

The duty of care essentially means board members have to pay attention, do their homework and ask good questions. The duty of loyalty means directors must always be sure to work on behalf of the organization's shareholders, not its executives or some other entity.

Boards run into big problems, however, when they are unsure who their shareholders are, or when they have to weigh the interests of a few different groups. Boards at public universities often struggle with these dynamics, as professors, parents, students and state governments each push somewhat different agendas. Santee Cooper directors over the years have had to deal with similar forces, the strength and direction of which have ebbed and flowed with political cycles and the condition of state coffers.

Because it is a state agency, the directors of Santee Cooper — South Carolina's biggest asset, worth about \$5 billion — are ultimately supposed to serve the interests of taxpayers first.

But as a major business concern with \$2.8 billion in outstanding debt, bondholders and customers also make a strong case for coming first.

The Moncks Corner-based utility's 11-member board has split in recent years over which of those groups should take priority.

Gov. Mark Sanford has argued that Santee Cooper doesn't do enough for the 60 percent of the state that doesn't have the option of buying its cheaper power, and he's pushed directors to put taxpayers in the same standing as the utility's ratepayers.

(Households that buy Santee Cooper power through the Berkeley Electric Cooperative pay about \$88.42 a month for 1,000 kilowatt hours of electricity. The same amount of power costs \$97.34 at South Carolina Electric & Gas, about 9.2 percent more.)

But others, including the utility's executives, contend the organization shouldn't be a piggy bank for the state, but rather an economic-development engine. Those who don't get Santee Cooper power still benefit because the utility's less expensive electricity rates help attract new businesses to the state, they say.

Differing viewpoints aside, Wall Street credit analysts are leery of political pressures and have put the utility on their watch lists because of board shakeups instigated by Sanford and a new law that was pushed by legislators who believe Sanford and his board appointees had overstepped their bounds.

If these credit-rating firms decide the utility is being mismanaged or financially compromised, power bills will probably go up for the roughly 40 percent of state households and businesses that get their power through Santee Cooper's cooperatives.

"I'm concerned by the whole atmosphere," John Rainey, the state's top economic adviser and a longtime Santee Cooper chairman, said recently. "The one thing money can't stand is uncertainty. The market can stand bad news and it can stand good news, but it can't stand uncertainty."

Veterans of other boards and business-ethics experts say Santee Cooper's board members had a perplexing dilemma to deal with.

"Frankly, it's a lousy way to do it, because there is a real conflict over what is good for the state," said Walter Scott, a business ethics professor at Northwestern University's Kellogg School of Management. "It puts the people in the middle in a highly risky position."

Nell Minnow, editor of the Corporate Library, a company that evaluates the work of corporate boards, puts it differently: "The problem is that if you're accountable to everybody, you're accountable to nobody."

But board-conduct experts also said it was their opinion that some Santee Cooper board members — and at times the entire group — wandered into terrain where directors should not go, regardless of what kind of organization they oversee.

The board's actions have been the focus of Senate Judiciary subcommittee confirmation hearings for board nominees in recent days. The hearings began in mid-May and are scheduled to continue this week.

A SECRET STUDY

One of the more controversial actions that drew the subcommittee's scrutiny was a push by Sanford to get a valuation study done on the utility.

Three board members appointed by Sanford — Richard Coen, Guerry Green and Keith Munson — helped the governor's office commission the valuation study in the fall. Although all parties involved said privatization was not discussed, selling the utility was the focus of the bid requests that went out to investment banks competing for the job, and the result, a report from Credit Suisse First Boston, examined how much Santee Cooper would fetch if sold to a private company.

According to the subcommittee's findings, the three directors briefed the full board about their actions only after interviewing companies to do the study. Also, Munson kept in close contact with the investment bank doing the work. He reviewed the report and suggested changes up until it was completed a few weeks ago. At the same time, the investment bank did not respond to repeated requests from Santee Cooper executives to review the report.

Munson continued to act independently of the board in penning a foreword to the study, which gave a history of Santee Cooper and said the utility's original mission — to provide cheap power to underserved rural areas — had been achieved. Munson likened the utility's cause to efforts to eradicate polio — meaning it was no longer necessary.

According to board experts, acting unilaterally is one of the big no-no's in director conduct, especially with respect to large initiatives considering sizable changes in the direction of an organization.

"Having board members make end runs I don't think is a very effective way to steer a company, and it certainly raises ethical issues," Scott said.

PLAYING WITH POLITICS

The same three directors continued to act independently of the board in recent weeks by lobbying against legislation that would limit Sanford's power over the board and let Santee Cooper customers sue directors, as shareholders of public corporations can.

Munson penned an op-ed for an Upstate newspaper on why the bill would be bad for the utility. He also detailed his opinion in a point-by-point summary, saying that Wall Street would "panic" over the legislation.

Green forwarded Munson's assessment to a New York credit-rating firm a few days after meeting with the firm's analysts. Green contended he was simply speaking for the utility's executives and doing his fiduciary duty to find out how the bill might affect Santee Cooper's fiscal bill of health. Coen and Munson supported Green's actions.

"What Guerry did was called leadership, and given the circumstances, it was appropriate," Coen said. "It was not normal board conduct, but nothing about this board has been normal."

But other board members criticized the unilateral action, and senators reviewing Green's position on the board accused him of lobbying for a downgrade to kill the legislation.

Ralph Ward, an independent consultant and editor of the Corporate Board magazine, said directors should never call attention to potential weakness in the organization.

"On a corporate board situation, that would really be over the line. You don't hang the dirty washing out on the line," Ward said.

Northwestern's Scott said board members should avoid political debate as much as or more than making big decisions unilaterally.

"Getting into a situation where, as a board member, you are playing political games with different agendas, I just think is very, very unhealthy," Scott said.

UNDER THE CLOAK OF DARKNESS

The current board also has been excessively secretive in its dealings, according to the subcommittee's lawyers.

The board closed its doors to the public 18 times between Jan. 28, 2003, and April 1, 2005, and seldom gave sufficient reasons for doing so.

Jay Bender, an attorney for the South Carolina Press Association, said the board's frequent closed-door executive sessions were "a consistent, persistent violation of the Freedom of Information Act."

Bender also said e-mails among a quorum of directors are violations of the law, because the communication was not displayed in an open forum, and the public was not given notice of the discussions.

Senate subcommittee attorneys argued that board members violated open-meeting laws by making decisions in groups of three, encounters that often represented quorums of board subcommittees. Some directors have acknowledged that they aren't thoroughly familiar with the state's so-called Sunshine laws, but they contend that they never crossed the line.

"Maybe we just have to give the appointees a two-week study grace period and then give them a quiz on FOIA," Sen. Dick Elliott, D-North Myrtle Beach, suggested last week.

THE AFTERMATH

In part because of those actions and other, similar decisions, lawmakers filed a rash of bills early this year aimed at reining in the Santee Cooper board and the governor's power over it.

One of those proposals became law last week, despite a veto from Sanford. Munson, one of the most embattled directors, promptly resigned, citing the new law.

Lawmakers called for Sanford to oust four of his other appointees for their actions in recent years.

Sanford has argued that his board picks made good changes at the utility and that actions labeled as mismanagement were examples of "looking under the hood," which he has encouraged at all state agencies. He denies giving his picks direction, beyond carrying the mandate of change that he said he gained in his election.

"It goes without saying that I want to have people who in the grand scheme of things philosophically don't want to go in a different direction ... that's not unique to my administration," Sanford said.

But while commending their work, Sanford acknowledged that some of his appointees may have acted outside the realm of what is proper for public officials, though he declined to comment on specific decisions.

Last week, after his appointees had come under repeated fire during the subcommittee hearings, Sanford said directors of the state's more influential boards will be required to take a one-day tutorial on open-meeting laws and other potential problem spots for relatively new public officials.

Sanford also distanced himself politically from board actions, saying he should be accountable for his administration's agenda on a large scale, but not for specific actions of his appointees.

"You can get sucked into a debate based on things your board did or did not do that really are not core to what got you into the political process," he said.

Under the law that he had vetoed, Sanford will still pick directors, but they will have to meet certain qualifications and be approved by a 10-person committee. He also will no longer be able to expel directors who don't vote the way he would like.

Authorities on corporate governance said the more voices involved in picking directors, the better.

"You don't really need a board if the governor is saying what they should do," Scott said. "It's playing political games in a setting that political games shouldn't be played in. But maybe I'm missing the point. Maybe the point is politics with this particular utility."

Taking the politics out of Santee Cooper was a big part of the reasoning behind the new law.

The utility will get its third chairman in five months soon.

After withdrawing Green's nomination as chairman, Sanford last week tapped Mount Pleasant construction magnate O.L. Thompson to lead the board. Thompson, 57, is familiar with Santee Cooper and serves on the Roper-St. Francis Foundation board with Lonnie Carter, the utility's chief

executive officer.

Thompson said that if his nomination is approved, he will take the helm with no "preconceived ideas" about which of the utility's many stakeholders might be getting short-changed.

"We're just hoping we can get things calmed down, get Santee Cooper off the front page of the paper and get down to business," Thompson said. "A business approach is what we're looking for."

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GOV. MARK SANFORD

Since taking office, Sanford has swapped out all but two of Santee Cooper's board members. Bowing to pressure from the governor, the board has sold surplus land and cut most of the utility's charitable contributions. Critics say Sanford's board changes and push for a greater return to the state have threatened the utility's stability and credit rating. Sanford says his push for changes at Santee Cooper is motivated by a desire to derive a greater return for taxpayers.

SEN. WILLIAM MESCHER

Mescher, a former chief executive officer of Santee Cooper, has been one of the loudest critics of Sanford and the current board in his role on a Senate Judiciary subcommittee that looked into utility's affairs. He said board members have hurt morale and turned the utility into a national embarrassment by pushing executives around and meddling in day-to-day business. Sanford has said Mescher has a conflict of interest in the debate because of his "sweetheart" retirement deal with the utility.

GUERRY GREEN

Sanford withdrew Green's nomination as chairman last week but may tap him for another board seat. Green helped Sanford commission a valuation study of the utility without board consent. He also e-mailed a credit-rating firm, warning that pending legislation would drastically impair the utility. Lawmakers on the Senate Judiciary subcommittee and some board members said both actions were irresponsible.

RICHARD COEN

Coen is one of Sanford's biggest financial supporters and has served on the Santee Cooper board, representing Charleston County, since June 2003. Coen pressured the utility's executives to abandon their sealed-bid approach in selling surplus land owned by Santee Cooper. He also helped Sanford's office commission the valuation study of the utility and, in a separate episode, set up a meeting with potential coal suppliers. Senators have accused Coen of micromanagement and possible conflicts of interests. He remains on the board.

KEITH MUNSON

Munson resigned from the Santee Cooper board last week, in protest of an override by the House and Senate of Sanford's veto of a law that, among other things, will allow the utility's customers to sue the board. Munson penned a foreword in the bank valuation report that said Santee Cooper's mission was complete. Munson also lobbied against the legislation changing the board's makeup. He did not seek board consent for any of those actions and has been criticized by fellow board members, as well as lawmakers.