

ANNUAL REPORT

TO: ETHICS COMMISSION APPOINTING AUTHORITIES

FROM: MARILYN HUGHES, EXECUTIVE DIRECTOR
ETHICS COMMISSION OF THE STATE OF OKLAHOMA

SUBJECT: FISCAL YEAR 2008

DATE: DECEMBER 8, 2008

THE FOLLOWING is the Ethics Commission Annual Report for Fiscal Year 2008, which, in accordance with the Constitutional Ethics Rules [Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. 2008 Supp., Ch. 62, App.], describes agency activities in the preceding fiscal year. This report is being provided to each of the five appointing authorities; to wit: the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court and the Attorney General. It covers July 1, 2007 to June 30, 2008.

THIS REPORT addresses matters required by constitutional rule; to wit: the names and duties of each individual employed by the Commission, together with a summary of its determinations and ethics interpretations. [Section 257:1-1-6(o) of the Rules of the Ethics Commission, 74 O.S. 2008 Supp. Ch. 62, App.] As permitted by the rule, it also contains information on other matters within the agency's jurisdiction.

COMMISSION MEMBERSHIP

THE COMMISSION is currently comprised of: Don Bingham, James Loy, Jo Pettigrew and John Raley. John Raley was elected Chairman and Jo Pettigrew was elected Vice Chairman at the Commission's regular meeting on October 17, 2008.

An alphabetical list of Commissioners presently serving, their addresses, congressional district, political party, date of appointment, term of office and appointing authority has been

prepared in accordance with qualifications set forth in the Oklahoma Constitution Article XXIX, Section 3(A)(B)(C) and (D). It is as follows:

DATA ON PRESENT MEMBERS OF THE ETHICS COMMISSION OF OKLAHOMA

Name and Address	Appointment Source/ Date of Appointment	Expiration of Term	Congressional District	Political Party
Don Bingham Riggs Abney et al. 502 West Sixth Street Tulsa, OK 74119 (918) 587-3161	Speaker of the House August 27, 2004	2nd Monday of July, 2009	District 1	Democrat
James W. Loy 2821 Country Club Drive Chickasha, OK 73018 (405) 224-2896	Chief Justice/ July 3, 2001	2nd Monday of July, 2011	District 4	Republican
Jo Pettigrew 29205 Homer Lane McLoud, OK 74851 (405) 275-1068	Governor December 4, 2007	2nd Monday of July, 2012	District 5	Democrat
John W. Raley Commercial Federal Bldg Ste 401 P.O. Drawer 1669 Ponca City, OK 73602-1669 (580) 762-1655	Attorney General/ June 14, 2007	2nd Monday of July, 2012	District 3	Republican

NAMES AND DUTIES OF COMMISSION EMPLOYEES

The Commission is required to report the names and duties of each employee. [Section 257:1-1-6 (o) of the Rules of the Ethics Commission, 74 O.S. Supp.2008, Ch. 62, App.] The following is a list of Commission staff members, together with a description of each employee's job.

Marilyn Hughes: Executive Director

Qualifications: an attorney licensed to practice law, with not less than five (5) years experience.

Duties:

- Employs and sets salaries of Commission staff within the limits authorized by the Legislature under the merit system.

- Is responsible for the administrative operations of the Commission.
- Prepares administrative reports to Commission on current status and progress of matters facing the agency and drafts agenda for meetings.
- Performs duties as delegated or assigned from time to time by law or by the Commission.
- Assists those who wish to file a complaint or information.
- Assures that all statutory complaints are in compliance with law.
- Notifies would-be filers if the complaint is not accepted due to its failure to meet jurisdictional requirements and explains reasons for refusal to accept.
- Forwards any complaint filed with the Commission, over which the Court on the Judiciary has jurisdiction, to the Court on the Judiciary.
- Forwards any complaint alleging a violation by a member of the Commission to the Council on Judicial Complaints.
- Prepares the agency's rules and rule amendments, instructional/educational manuals, forms and other materials.
- Conducts educational seminars.

Rebecca Adams: General Counsel

Qualifications: an attorney licensed to practice law with not less than five (5) years experience.

Duties:

- Assures that the Commission operates in conformity with controlling authority, including, but not limited to: Oklahoma Constitution, Article 29; the Constitutional Ethics Rules [“the Ethics Rules”], Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. 2008, Ch. 62, App.; the Political Subdivisions Ethics Act, 51 O.S. 2001, §§ 301-325; the agency’s Administrative Rules [OAC Section 258:1-1-1 et seq.]; the Open Meetings Act, the Administrative Procedures Act; the Open Records Act, the Americans with Disabilities Act; and other laws and requirements governing state agencies.
- Represents the Commission in district court and before the Oklahoma Supreme Court in matters of original jurisdiction.

- Conducts legal research and writes briefs and memoranda on issues confronting the Commission.
- Researches laws from other jurisdictions and advises the Commission on constitutional issues pertaining to drafting and amending the Ethics Rules.
- Researches and writes Ethics Interpretations, similar to Attorney General Opinions, which form the body of the Commission's interpretative authority.
- Drafts Informal Opinions, which are approved by the Commission Chairman or, in his absence, the Vice Chairman, subject to Commission review.
- Works with the agency Investigator on investigations; interviews witnesses, assists with compiling of documentary evidence; prepares delineation of issues; evaluates the weight of evidence for purposes of prosecution; anticipates and briefs issues of law which may affect prosecution; reports to and advises the Commission on these matters in executive session of regular and special meetings.
- Drafts public and private reprimand documents.
- Negotiates and drafts conciliation agreements and settlement agreements.
- Prosecutes rule violations in district court and, should prosecutions be removed, before the Oklahoma Supreme Court.
- Works with outside prosecutors; assists these agencies in the preparation of cases for court; serves as a witness in these prosecutions; when requested, provides appropriate information to defense counsel; testifies before grand juries and in court, either at trial or preliminary hearings.
- Assists with conduct of assessment appeals before the Commission; prepares Findings of Fact, Conclusions of Law and Final Orders; represents the Commission in any district court trial de novo proceedings arising from challenge of the Commission's ruling in assessment appeal matters.
- Assists with drafting the administrative report prepared for members prior to each Commission meeting; works with the Director in preparing the meeting agenda; assists Director with drafting of proposed rules and rule amendments.
- Takes notes and drafts minutes from transcript for all the Commission meetings and public hearings.
- Handles a portion of the agency's correspondence.

- Drafts agency press releases, calls media conferences, deals with reporters, appears on television and radio on behalf of the Commission.
- Prepares the Commission's Annual Report.
- With respect to the agency's constitutional and statutory duty to educate, speaks to various groups who ask for information on the Ethics Commission.
- Answers questions from the public on a daily basis in person and via telephone and e-mail.
- Helps those under the agency's jurisdiction to comply with the Ethics Rules and the Political Subdivisions Ethics Act
- As second in command of the agency, carries out certain duties of the Director in the Director's absence.

Patricia Bryant: Principal Assistant

Duties:

- Acts as assistant to Executive Director and General Counsel.
- Prepares Agency's annual Budget Request and Budget Work Program.
- Purchases supplies and pays bills; prepares reports to Commission on monthly and year-to-date expenditures plus percentage of budget.
- Gives notice of assessments of late filing fees by certified mail, providing notices of and schedules hearings, tracks payment schedules, and provides reports to Commission.
- Tracks statutory deadlines for filing reports and statements and coordinates sending of reminders and registered notices of failure to file.
- Prepares meeting packets, attends, takes roll call votes and records Commission meetings. Transcribes audio tapes of meetings and hearings.
- Maintains personnel, payroll and time records and files appropriate reports as required.
- Distributes information and forms on all insurance and other benefits available to Commission employees.
- Collects all fees for copying, assessments or civil penalties; accounts for and deposits funds properly.

- Tracks state and county elections, including special elections; amends reporting data to correspond to each election.
- Handles part of agencies day-to-day general correspondence, including sending forms and other materials when requested.
- Assists agency clients with viewing or copying files and answers questions from public concerning the filing and office procedures.
- Serves as agency coordinator for savings bonds, United Way, wellness, retirement, risk management, insurance, deferred compensation and certified procurement officer.
- Drafts the agency's Affirmative Action Plan and serves as agency Affirmative Action Officer.
- Tracks inventory and serves as inventory officer.

R. Darey Roberts: Investigator

Duties:

- Investigates complaints received by the Commission involving violations of laws governing campaign finance, personal financial disclosure, or ethical conduct of public officials and employees; selects issues involved; clarifies course of action of investigation with attorneys; makes written or personal contacts with complainant(s) and respondent(s), witnesses, businesses and other sources to obtain necessary information.
- Investigates informations within scope ordered by the Commission.
- Secures written documentation of campaign records, income records, voting records, etc. to verify the testimony of others.
- Prepares and serves subpoenas duces tecum. Reviews and summarizes subpoena documents. Interviews providers of documents when necessary.
- Prepares reports of investigation results for use by the Ethics Commission and potential use in further legal actions.
- Reviews and audits committee registrations; campaign contributions and expenditures reports; personal financial disclosure statements submitted by candidates, state officers and state employees; and lobbyist registrations and expenditure reports submitted by lobbyists.

- Prepares correspondence requesting corrections or clarification of registrations, reports, or statements; reviews corrected documents for compliance.
- Testifies at Commission meetings and hearings or trials.
- Answers questions from the public on a daily basis in person and via telephone and e-mail.
- Serves as the Commission's Grievance Officer.
- Performs related work as required and assigned.

Charles Knight: Information Systems Network Administrator

Duties:

- Cleans, periodically rearranges, troubleshoots problems, performs periodic repairs, or coordinates the repair of all hardware, including printers, and other computer equipment.
- Installs, reinstalls, and troubleshoots problems with software.
- Manages the NOVELL Network with a server and ten (10) personal computers.
- Makes changes in the configuration of each personal computer where necessary.
- Devises new or revised methods that more effectively meet user needs.
- Manages the Ethics Information Systems and its data.
- Supervises one employee.
- Assists the public with electronic submissions of campaign reports.
- Manages the website.
- Tracks school board election material orders and payments
- Advises the Director on computer-related items.
- Helps with agency mailings.
- Performs miscellaneous office tasks.

Janice Gafford: Information Systems Applications Specialist

Duties:

- Maintains the databases for county candidates, county political action committees, county election board members and county election board secretaries.
- Maintains the personal financial disclosure databases for state candidates, state officers and certain state employees
- Maintains the agencies, boards and commissions database
- Tracks municipal election material orders and payments.
- Generates labels, reports and lists to end users.
- Performs quality control checks on all documents.
- Assists with all agency mailings.
- Clocks in and examines incoming faxes.
- Performs periodic database back-ups.
- Provides hardware and software upgrades.
- Assists in maintenance of agency computer hardware and software.
- Helps answer telephones.
- Performs miscellaneous office tasks.

Merlyn Rios: Administrative Assistant

Duties:

- Opens, clocks in, and examines incoming mail, delivering documents to be posted to the computer.
- Collects, separates, and compares posted documents for filing status, notarization, etc.
- Prepares appropriate labels for new files, color coding labels by year.

- Using word processing program, composes correspondence in relation to documents received or required with appropriate follow-ups.
- Maintains and archives documents.
- Manages lobbyist electronic filing system inputting paper filed documents.
- Answers questions pertaining to filing forms, as explained by agency director, or directs calls to appropriate agency personnel, relieving director of clerical details and minor administrative matters resulting from calls or correspondence.
- Assists in mass mailings to candidates, political organizations, lobbyists, and elected officials.
- Delivers agency media releases to Capitol Media Corps.
- Performs related work as required and assigned.

**PROMULGATION OF FOURTEENTH SET OF AMENDMENTS
TO THE CONSTITUTIONAL ETHICS RULES**

In accordance with Oklahoma Constitution Article XXIX, Subsections 3(A) and 3(B) and Constitutional Ethics Rule 257:1-1-6(m), the Commission held public hearings in fiscal year 2008 on the eleventh set of proposed amendments to the Constitutional Ethics Rules [supra]. The Commission then adopted a series of proposed amendments.

As required by Article XXIX, Section 3(C), these proposed amendments were presented to the Governor and each House of the Legislature on the second day of the second session of the Fifty-First Legislature. The Legislature took no action on the amendments, and they became law. The effective date for most of the proposed amendments was July 1, 2008.

With respect to adopting its fourteenth set of constitutional rule amendments, the Commission reports the following:

In the interest of securing the widest possible audience, it held a November 2008 public hearing/meeting in Tulsa, Oklahoma, where it opened the floor for comments on the proposed amendments. Oral and written input was received.

The agency then held a public hearing on rule modifications in Oklahoma City in December 2008. Press releases were issued and articles appeared in commercial newspapers. It was carried by the broadcast media. The public was invited and encouraged to attend. Input on rule amendments was received there, as well.

The Commission met in regular meeting January 25, 2008, following the final public hearing. At this meeting, it voted upon proposed amendments. The Commission voted upon each proposal sponsored by a member. The final draft of proposed amendments to the constitutional rules was presented to both Houses of the Legislature and the Governor on the second day of the legislative session, as required by Article XXIX, Section 3(C).¹ As a courtesy, copies were delivered to the Chief Justice and the Attorney General.

The proposed amendments were not disapproved by the Oklahoma Legislature. Thus, in accordance with Article XXIX, Section (C), they became law.

EDUCATION/ORIENTATION PROGRAM

The Commission is charged with providing orientation courses on the constitutional rules and with initiating and continuing programs for the purpose of educating officials, employees and citizens of this state on matters of ethics and government service. Section 257:1-1-6(l) of the Rules of the Ethics Commission [supra]. 51 O.S. 2001, § 305(A)(9) The Commission's education program for fiscal year 2008 included outreach speaking engagements. The agency works with a variety of groups towards this end. In fiscal year 2008, Commission members or staff fulfilled three speaking engagements sponsored by the State Senate and state agencies, boards, commissions, councils, departments, bar associations, colleges, vo-techs or universities.

The Commission also drafted and published on its website training manuals, instructional materials and reporting forms for all aspects of campaign reporting, personal financial disclosure, ethics and conflicts of interest provisions and lobbying disclosure, in accordance with the current constitutional rules. It made available to the public documents the Commission used in its work on the rule amendments. In accordance with Constitutional Rule 257:1-1-7, the Commission published on its website the Constitutional Ethics Rules [supra], instructional manuals and forms booklets. In accordance with Section 305(A)(3) of the PSEA [supra], the Commission published that act in booklet form; and, pursuant to 51 O.S. 2001, §305(A)(3), forms and similar materials were provided to assist compliance with the PSEA [supra].

As part of its on-going policy to educate its members and staff, the Commission each year participates in an annual conference sponsored by the Council On Governmental Ethics Laws ["COGEL"]. COGEL is a professional organization for agencies and individuals with responsibilities in governmental ethics, elections, campaign finance, freedom of information and lobby law regulation. Its membership is drawn from federal, state, provincial, local and foreign governments, as well as from other interested parties. In fiscal year 2008, Chairman Don Bingham and the Director attended the Twenty-Ninth Annual COGEL Conference.

¹Article XXIX, Section Three (C) provides: "Newly promulgated rules shall be presented to each House of the Legislature and to the Governor on the second day of each session of the Legislature..."

It was held September 17-19, 2008, in Victoria, British Columbia, Canada, and hosted by Elections BC, Province of British Columbia.

SUMMARY OF COMMISSION DETERMINATIONS AND ETHICS INTERPRETATIONS

As part of its constitutional directive, the Commission issues ethics interpretations pertaining to the provisions of the Constitutional Ethics Rules [supra]. The agency is statutorily authorized to issue ethics interpretations on questions arising from the PSEA [supra].

Ethics Interpretations lie where the question or questions presented are reasonably susceptible to more than a single analysis. They require the Commission to construe its rules or the PSEA [supra]. In instances where the question or questions posed can be answered from the face of the rules, the Commission converts the request to that for an informal opinion. Staff issues these upon approval of the Chairman, or in his absence, the Vice Chairman. The opinion letter is then circulated among the members, any one of whom can request that the matter be converted to an ethics interpretation and ruled upon by the entire Commission.

During fiscal year 2008, the Commission issued no informal opinions.

The holdings of the ethics interpretations issued by the Commission during fiscal year 2008 determined the following:

ETHICS INTERPRETATION EI-2007-001

It is therefore the ethics interpretation of the Ethics Commission, as decided at its regular meeting held December 18, 2007, that:

- 1. The Commission holds that a thing of value or things of value provided a state officer/employee by a stockholder, partner, agent, affiliate, member, employee, or officer of a lobbyist principal for a reason related to the lobbyist principal or lobbyist(s) of the lobbyist principal will be aggregated with other things of value, which are provided on behalf of the lobbyist or the lobbyist principal, if and only if the thing or things of value are given at the specific direction of, and on behalf of, the lobbyist or lobbyist principal.**
- 2. Where a contract lobbyist has multiple clients, things of value he or she gives on behalf of one client are not aggregated with the other clients. For instance, should a contract lobbyist with ten clients provide a thing of value on behalf of the first client, that same thing of value will not count against the \$300 limit for state elective officers [or the \$100 limit for non-elective officers and state employees] for the other nine clients. The Commission holds that the aggregation rule contained in Rules' Section 257:20-1-9(c) and 257:23-1-2(c) does not apply to a contract lobbyist who has more than one client.**
- 3. If a lobbyist principal provides a \$50 thing of value to a state official, that \$50 must be aggregated with things of value provided by other individuals/entities listed in the 2006**

amendment. That \$50 in things of value will be aggregated with a thing of value provided by, for instance, a shareholder giving on behalf of a lobbyist or lobbyist principal. The Commission suggests the company, together with its lobbyist(s), set up a tracking system in order to comply with the Rules. Both have a duty to know, just as lobbyists have an obligation to know, what they spend on a state officer/employee and at what point they reach a calendar year limit. Section 257:23-1-2(g) also place a duty upon "other persons" giving things of value on the behalf of the lobbyist(s)/lobbyist principal to notify the lobbyist, for reporting purposes, within seven days of such expenditures.

4. It is possible—in the absence of keeping tabs on what is being spent—for a person to unwittingly exceed the limit on things of value which can be lawfully given under Section 257:20-1-9, just as it is possible for a contributor, who is not keeping track of his finances, to violate the \$5,000 contribution limit to a candidate campaign. However, there is a cure if the thing of value is returned or paid back within 30 days after receipt.
5. A registered lobbyist must attribute to one or all clients his or her expenditures for things of value provided in furtherance of "relationship building." The clear language of Section 257:23-1-2(d)(5) requires the lobbyist report to include "[t]he name of the lobbyist principal or lobbyist principals on whose behalf the thing of value was given, if any." The Commission finds that the business of lobbying encompasses "relationship building" with a state officer/employee. Therefore, if a lobbyist spends \$60 on a dinner with an official/state employee for this purpose, the lobbyist is required to attribute that \$60 to one or all clients for whom the lobbyist is registered.

Ethics Interpretations constitute the body of the Commission's interpretive authority. Both these and Informal Opinions are published through the West Group. In addition, copies of individual interpretations/opinion letters are available from the Commission. In order to facilitate dissemination, both ethics interpretations and informal opinions are posted to the agency's web page, found at: www.ethics.state.ok.us.

In keeping with Commission policy, all ethics interpretations are submitted to the Capitol Media Corps, together with a press release explaining the request and the Commission's response. These press releases are drafted by staff, but approved by the Chairman, or in his absence, the Vice-Chairman.

COMPLAINTS /INFORMATIONS/LITIGATION

In fiscal year 2008, the Commission received 5 complaints or informations and addressed those carried over from the previous fiscal years. It took no action on 1, dismissed 2, settled 0, issued a public reprimand on 0 and private reprimands on 0, referred 3 for investigation by the appropriate prosecuting authority, referred none for prosecution and carried over 4 fiscal year 2008 matters into fiscal year 2009. For more information, see the link to **Memorandum in Support of Additional Funding for the Oklahoma Ethics Commission with Exhibits**— approved by the Commission August 22, 2008, on our website at www.ethics.ok.gov.

REPOSITORY FUNCTION

In fiscal year 2008, both the Constitutional Ethics Rules [supra] and the PSEA [supra] were in effect. Each mandated its own set of reports. The Commission acted as a repository for specified filings at the county and state levels of government.

On the state and county levels, the agency processed 1,269 Campaign Contributions And Expenditure Reports [Form C-1R or C-3R and Form C-1 or C-3] for state and county candidates, 86 for special election candidates, 1,905 for political action committees and handled 2,795 pieces of related correspondence. It received 6,591 Statements Of Financial Interests and Financial Disclosure Statements [Form F-1R, F-2R or F-3R and Form F-1] for state and county candidates, elected officials, board and commission members, agency heads, agency first deputies and certain state employees. It also sent out 5,768 pieces of related correspondence. Estimates have been made of the number of amended statements and reports.

Some reasons for differences in the agencies numbers for fiscal year 2007 and fiscal year 2008 are: (1) Fiscal year 2007 was an election year, and fiscal year 2008 was not; (2) approximately 600 committees now file electronically, eliminating the need for processing statements and reports.

In the same time period, the Commission processed Designation Of Agent Forms [Form D-1] for 307 county candidates and political action committees. It processed Statements Of Organization [Form SO-1 and Form SO-2] and Registration: Committee Forms [Form R-1] for 798 state and county candidates, special election candidates and political action committees. It also processed 373 Lobbyist Registrations [Form L-1], 746 Lobbyist Expenditure Reports [Form L-2], and 889 pieces of lobbyist related correspondence.

In addition, the Commission accepted for filing any and all information voluntarily supplied that exceeded requirements of law.

All registrations, reports and statements, together with materials made public by the Open Records Act [51 O.S. 2001, § 24A.1 et seq.], were made available during regular business hours. As required by 257:1-1-6(f), these reports were preserved according to the Records Management Act [67 O.S. 2001, § 201 et seq.].

LATE FEES ASSESSED

By law, the Ethics Commission is required to assess fines within specified ranges against persons failing to timely file reports [74 O.S. 2001, § 4256]. In fiscal year 2008, the Commission held 39 administrative hearings on assessments.

The Commission assessed \$103,985 late fees against 203 persons or entities. The Commission [on appeal] and/or its hearing officer [initial hearing] modified, rescinded or reduced \$44,160 assessments. Total amount of fees actually collected in fiscal year 2008 was \$23,125 . None come to the agency but are delivered to the State Treasurer for deposit into the General Revenue Fund.

RECOMMENDATIONS FOR LEGISLATION

The Commission will vote on its fifteenth set of proposed modifications to the Constitutional Ethics Rules [supra] in January 2008. These proposed modifications will, in accordance with Article XXIX, Section 3(C) of the Oklahoma Constitution, be submitted to the Governor and both Houses of the Legislature on the second day of the 2006 legislative session. At this time, the Commission has adopted no recommendations for legislation.

THIS CONCLUDES THE ETHICS COMMISSION FY 2008 ANNUAL REPORT.

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xc: The Honorable Brad Henry Governor of the State of Oklahoma
The Honorable Glenn Coffee, President Pro Tempore of the Oklahoma Senate
The Honorable Chris Benge, Speaker of the Oklahoma House of Representatives
The Honorable James R. Winchester, Chief Justice of the Oklahoma Supreme Court
The Honorable W. A. Drew Edmondson, Attorney General of the State of Oklahoma

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