

## ANNUAL REPORT

TO: ETHICS COMMISSION APPOINTING AUTHORITIES

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

SUBJECT: FISCAL YEAR 2010

DATE: MARCH 22, 2011

THE FOLLOWING is the Ethics Commission Annual Report for Fiscal Year 2010, 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. 2010 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, 2009 to June 30, 2010.

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. 2010 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: Karen Long, James Loy, Bob McKinney, Jo Pettigrew and John Raley. Bob McKinney was elected Chair and Karen Long was elected Vice Chair at the Commission's regular meeting on October 18, 2010.

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**

<b>Name and Address</b>	<b>Appointment Source/ Date of Appointment</b>	<b>Expiration of Term</b>	<b>Congressional District</b>	<b>Political Party</b>
Karen Long Rosenstein, Fist & Ringold 525 South Main, Suite 700 Tulsa, OK 74103 (918) 585-9211	Speaker of the House August 11, 2009	2 <sup>nd</sup> Monday of July, 2014	District 1	Democrat
James W. Loy 2821 Country Club Drive Chickasha, OK 73018 (405) 224-2896	Chief Justice/ July 3, 2001	2 <sup>nd</sup> Monday of July, 2011	District 4	Republican
Bob McKinney RCB Bank P.O. Box 189 Claremore, OK 74018 (918) 341-6150	President Pro Tempore July 8, 2009	2 <sup>nd</sup> Monday of July, 2014	District 2	Republican
Jo Pettigrew 29205 Homer Lane McLoud, OK 74851 (405) 275-1068	Governor December 4, 2007	2 <sup>nd</sup> 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	2 <sup>nd</sup> 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. 2010, 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.
- Finalizes minutes from transcript for all the Commission meetings and public hearings.
- 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.
- Prepares the Commission's Annual Report.
- 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. 2010, 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 executive session minutes for all the Commission meetings.
- 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.
- 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 Constitutional 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.
- Pays bills; prepares reports to Commission on monthly and year-to-date expenditures plus percentage of budget.
- Researches data for of late filing fee assessments; schedules hearings, tracks payments and provides reports to Commission.

- Tracks statutory deadlines for filing reports and statements and coordinates sending of reminders and 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 records and files appropriate reports as required.
- Collects all fees for copying, assessments or civil penalties and non candidate committee and lobbyist registration fees; 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.
- Assists agency clients with viewing or copying files and answers questions from public concerning the filing and office procedures.
- Serves as agency coordinator for retirement, risk management and deferred compensation.
- 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.

Marcia Suzi Bryan: Business Manager II

Duties:

- Prepares payroll, maintains time and leave records.
- Prepares spreadsheet, produces and mails by certified mail notices of late fee assessments.
- Assists lobbyists and non-candidate committees with online registration.
- Files paper-filed campaign reports on the agency's online reporting system.
- Maintains email distribution lists for Statements of Financial Interest.
- Serves as agency procurement officer; and benefit/wellness coordinator.
- Trainee for accounts payable; preparation of reports to Commission on monthly and year-to-date expenditures plus percentage of budget; agency's annual Budget Request and Budget Work Program; deposits; Commission meeting preparation and minutes; Affirmative Action Plan; and inventory tracking.

### 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.
- 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.
- Acts as a liaison with the Office of State Finance on hardware and software upgrades and maintenance of agency computer hardware and software.
- Helps answer telephones.
- Performs miscellaneous office tasks.

#### **PROMULGATION OF SIXTEENTH 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 2010 on the sixteenth 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-Second Legislature. The Legislature took no action on the amendments, and they became law. The effective date for the proposed amendments was July 1, 2010.

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

In the interest of securing the widest possible audience, it held a November 2009 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 2009. 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 June 19, 2009 and January 22, 2010, following the final public hearing. At these meetings, 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).<sup>1</sup> As a courtesy, copies were electronically transmitted 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(1) of the Rules of the Ethics Commission [supra]. 51 O.S. 2001, § 305(A)(9) The Commission's education program for fiscal year 2010 included outreach speaking engagements. The agency works with a variety of groups towards this end. In fiscal year 2010, Commission members or staff fulfilled seven speaking engagements sponsored by the State House, State Senate and state agencies, boards, commissions, councils, departments, bar association, 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

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<sup>1</sup>Article 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..."

on its website the Constitutional Ethics Rules [supra], instructional manuals and forms booklets. Pursuant to House Bill 2408, amending Section 305(A)(3) and repealing Section 305.1 of the PSEA [supra], the Commission also published that act, forms and manual on its website.

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 2010, Chairman Jo Pettigrew attended the Thirty-First Annual COGEL Conference in Scottsdale, Arizona.

It was held December 6-9, 2009, in Scottsdale, Arizona, and hosted by the Arizona Citizens Clean Elections Commission.

#### 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 2010, the Commission issued three informal opinions. The holdings of the informal opinions were as follows:

#### INFORMAL OPINION IO-2010-001

**It is therefore the informal opinion of the Ethics Commission staff that, so long as fair market value is paid, the Constitutional Ethics Rules permit candidates for state elective office to utilize campaign funds for a registration fee or ticket to attend an event, meal, banquet or auction sponsored by an associated group or federation within a state political party. As is the case with pie suppers and the like, campaign funds may be used to buy an item auctioned at such an event. Campaign funds may also pay for advertising in the group’s event-related programs, booklets and brochures.**

**Staff cautions that should the candidate pay an inflated price, his/her campaign fund will be deemed to have made a contribution to the group in the amount of the difference between fair market**

value and what was paid. That scenario would violate Rules' Section 257:10-1-20(a)(3)(H), which prohibits the transfer of campaign funds to a party committee other than the state, county or congressional district committee.

Your group is an "associated group" or "federation" of – and, hence, an "affiliated" or "connected entity" with – a state political party. It is therefore expressly barred from receiving any type of transfers from candidate campaign funds.

#### INFORMAL OPINION IO-2010-002

It is therefore the informal opinion of the staff of the Ethics Commission that nothing in Rules' Section 257:20-1-9(f)(1) prohibits the Commissioners of the Land Office from requiring of their employees disclosure of an ownership interest – or receipt of a "thing of value" – in or from entities that do business with the Land Office, and/or disclosure of ownership interests in oil and gas wells in which the agency also holds an interest – or which may affect the ownership interest, such as a pooling interest.

#### INFORMAL OPINION IO-2010-003

It is therefore the informal opinion of the staff of the Ethics Commission that Section 257:10-1-2(a)(1) does not restrict the federal maximum donation of \$10,000 to a Levin Fund, nor does it require aggregation of Levin Fund contributions with those given to a state party committee. This same provision sets the latter at \$5,000 per calendar year. A non-corporate Oklahoma contributor could, hence, make a \$10,000 contribution to the state party's Levin Fund, while also giving the state party a maximum \$5,000 contribution during a calendar year.

The holdings of the ethics interpretations issued by the Commission during fiscal year 2010 determined the following:

#### ETHICS INTERPRETATION EI-2009-003

Section 257:10-1-3(a) does not prohibit the scheduler of a statewide elective officer, in the performance of his or her normal duties, from establishing and maintaining the officer's full schedule, including coordinating and responding to requests for partisan activity. Moreover, that employee must take care that, in carrying out this function, he or she avoids actively participating, assisting, organizing or preparing for a fundraiser, soliciting funds for or against a candidate for state office/ballot measure or otherwise engaging in partisan activity on state time, with the use of state property or while being compensated for such with state funds.

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.ok.gov](http://www.ethics.ok.gov).

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 Chair, or in his or her absence, the Vice-Chair.

#### COMPLAINTS /INFORMATIONS/LITIGATION

In fiscal year 2010, the Commission received 10 complaints or informations and addressed those carried over from the previous fiscal years. It took no action on 6, dismissed 2, settled    , issued a public reprimand on 0 and private reprimands on 0, referred 2 for investigation by the appropriate prosecuting authority, referred none for prosecution and carried over 3 fiscal year 2009 matters into fiscal year 2010.

#### REPOSITORY FUNCTION

In fiscal year 2010, 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 152 Campaign Contributions And Expenditure Reports [Form C-1R or C-3R and Form C-1 or C-3] for state and county candidates, 42 for special election candidates, 412 for political action committees and handled 3,939 pieces of related correspondence. It received 7,142 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. State candidates filed 1,105 and political action committees filed 1,263 reports electronically. The office sent out 5,851 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 2009 and fiscal year 2010 are: (1) Fiscal year 2009 was an election year, and fiscal year 2010 was not; (2) approximately 725 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 204 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 768 state and county candidates, special election candidates and political action committees; 230 Form SO-2s were filed electronically. It also processed 384 Lobbyist Registrations [Form L-1],

577 Lobbyist Expenditure Reports [Form L-2], and 773 pieces of lobbyist related correspondence; 158 Form L-2s were filed electronically.

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 2010, the Commission held 30 administrative hearings on assessments.

The Commission assessed \$79,355 late fees against 115 persons or entities. The Commission [on appeal] and/or its hearing officer [initial hearing] modified, rescinded or reduced \$38,650 assessments. Total amount of fees actually collected in fiscal year 2010 was \$5,335. None came to the agency but was delivered to the State Treasurer for deposit into the General Revenue Fund.

#### RECOMMENDATIONS FOR LEGISLATION

The Commission will vote on its seventeenth set of proposed modifications to the Constitutional Ethics Rules [supra] in January 2011. 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 2011 legislative session. The Commission will adopt recommendations to conform statutes to the U.S. Supreme Court case of *Citizens United v. FEC* and the U.S. Court of Appeals case from the of *SpeechNow.org v. FEC*.

THIS CONCLUDES THE ETHICS COMMISSION FY 2010 ANNUAL REPORT.

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xc: The Honorable Mary Fallin, Governor of the State of Oklahoma  
The Honorable Brian Bingman, President Pro Tempore of the Oklahoma Senate  
The Honorable Kris Steele, Speaker of the Oklahoma House of Representatives

The Honorable Steven Taylor, Chief Justice of the Oklahoma Supreme Court  
The Honorable Scott Pruitt, Attorney General of the State of Oklahoma

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