

MINUTES OF REGULAR MEETING
of the
ETHICS COMMISSION
STATE OF OKLAHOMA
held
AUGUST 14, 2009

Call to Order

Upon notice with agenda being properly posted at the principal office at least twenty-four (24) hours previously and notice being filed at least ten (10) days in advance with the Office of the Secretary of State, a regular meeting of the Ethics Commission of the State of Oklahoma ["Commission"] was called to order on Friday, August 14, 2009, at 10:00 a.m. Chairman John Raley ["Raley"] presided over the meeting which was held in Room 432A, State Capitol Building, Oklahoma City, Oklahoma.

The Chair invited Commissioner McKinney to introduce a special guest — his son Sam — who will serve as a page for Senator Sean Burrage in March 2010.

The Chair then made what he termed both a sad and happy announcement. The Speaker of the House, he said, issued a press release advising of the appointment of Karen Long ["Long"] as a new member of the Ethics Commission. Long, he reported, is a partner of the Tulsa law firm of Rosenstein, Fist & Ringold. The Chair noted she had a stellar reputation and would be a welcome addition.

However, members expressed regret and accolades for the tenure of Don Bingham serving at his last meeting as a commissioner.

The Chair began, "...Commissioner Bingham...has no way of knowing how many times I have looked in his direction for guidance and for strength. He has been a Rock of Gibraltar on this Commission. We have looked to him for guidance and particularly to guide us through a legal labyrinth that some of us cannot understand. He has always looked at these issues from a very practical and yet compassionate manner. His good sense, his good judgement and his knowledge of the law has been unsurpassed."

Loy said, "Don Bingham, you've not only been a legal scholar that takes a lay person like myself and helps to make some sense to me

out of the things that are in our books and the law. You've also been an outstanding gentleman and contributed wonderfully and mightily to this Commission. I don't mean to undervalue our personal friendship, but thank you so much for your service to this Commission and to the state."

Vice Chair Pettigrew said, "I, like Commissioner Loy, have used your wise guidance on lots of things. Thank you for your service. Thank you for your friendship."

Commissioner McKinney said, "I...appreciate your time and effort, and I've still got your phone number."

Director Marilyn Hughes said, "...the staff has certainly enjoyed working with you."

General Counsel Rebecca Adams described Bingham as "...a legal scholar who has sat on the Commission and whose knowledge of the law and ability to analyze and dissect with precision legal issues that have come before this Commission is unsurpassed."

Determination
of Quorum

Roll was called to determine the existence of a quorum for the transaction of business. Commissioners answering present were: Raley, Bob McKinney ["McKinney"], Jo Pettigrew ["Pettigrew"], James Loy ["Loy"] and Don Bingham ["Bingham"]. A quorum of qualified members was found to exist and the business of the meeting went forward.

Commission staff members present were: Marilyn Hughes ["Hughes"], Executive Director; Rebecca Adams ["Adams"], General Counsel; Patricia Bryant ["Bryant"], Principal Assistant; and R. Darey Roberts, Investigator. Observing all or part of the meeting were: Lee Slater, attorney; Tres Savage, *E Capitol.Net*; Cheryl Purvis, Amy Alden and Rick Farmer, House staff; Cathy Welch, Campaign Technologies; Caroline Dennis, Senate staff; Jason Doyle, *OETA*; Linda Grey Murphy and Todd Goodman, Oklahoma Democratic Party; Sam McKinney, Commissioner McKinney's son; Lynn Howell, Common Cause Oklahoma; H.J. Reed, lobbyist; and Michael McNutt, *The Oklahoman*.

Public Comment on or
Request for Constitutional
Rule Amendments

A public hearing began consisting of taking testimony and comments, as well as consideration of, and discussion on, promulgation of amendments and/or modifications to the Constitutional Ethics Rules ["Rules"], Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp. 2009, Ch. 62. App., and/or adopting

resolution(s) to request legislative action with respect to new items introduced for discussion or those listed in the published document titled: *Rules of the Ethics Commission, Proposed Amendments and/or Drafts for 2010 Legislative Session for consideration at the August 14, 2009 Regular Meeting of the Ethics Commission*, incorporated by reference in this agenda as fully set forth in the document.

Lynn Howell ["Howell"]

Howell, Common Cause Oklahoma, concurred with the Commissioners' sense of loss for Bingham as a Commissioner. He extolled his courageous positions and both his and all commissioners' efforts to make the Rules better and more consistent despite criticism from many sources, more enforceable, easier to follow, moving with the times, eliminating costs, making the internet more usable, and making information more accessible to the public. He acknowledged the difficulty in enforcing Rules without adequate funding and pledged the support of Common Cause for better funding sources.

There were no further comments. No action was necessary.

Discussion on Whether to Adopt Resolution On Whether To Enforce Existing Rules If Amended By Proposed Rule Amendment #9

The next item on the agenda was discussion on whether to adopt the following resolution on whether to enforce existing Rules if amended by proposed Rule Amendment #9.

WHEREAS, the Ethics Commission amended Rules 257:10-1-2(c) of the Rules of the Ethics Commission, 74 O.S. Supp. 2009, Ch. 62, App.] effective July 1, 2009; and

WHEREAS, the intent of the amendment was to hold harmless a treasurer who makes three written efforts to obtain a contributor statement within 30 days of accepting a contribution; and

WHEREAS, further amendments to Section 257:10-1-2(c) have been promulgated clarifying the original intent of the amendment;

NOW, THEREFORE, the Commission hereby adopts this Resolution and expresses its intent not to enforce the current language of Section 257:10-1-2(c) until the Legislature has the opportunity during the 2010 legislative session to review this promulgated amendment.

The Chair called for discussion by Commissioners.

Pettigrew

Pettigrew asked to change the wording from "...expresses its intent not to enforce the current language..." to "...not to enforce the

contributor statement requirement”. With this change, she moved the Resolution’s adoption.

Hughes noted the Resolution made the assumption that the Commission had promulgated Rule amendment #9. She suggested that action be addressed prior to its adoption.

Adams suggested changing the wording to “...not to enforce the contributor statement requirement of Section 257...” and to delete the words “current language of”. Pettigrew agreed.

The Chair called for a motion to adopt proposed Rule Amendment #9 as a “clarifying rule” before considering the Resolution.

McKinney so moved. Loy seconded the motion.

Bingham

Bingham clarified that the Resolution would establish that, if the three written unsuccessful efforts were made to obtain the contributor statement, the campaign committee or the treasurer would not be liable for discipline assuming the three efforts could be verified.

The Chair asked if there were language requiring certification by the filer of the efforts? Both Hughes and Adams agreed there was not.

Lee Slater [“Slater”]

Slater claimed there was no requirement for certification of the receipt of contributor statements in the Rules.

Hughes disagreed. She pointed out that Section 257:10-1-14(a)(20) required the treasurer or person signing the report to certify that the contributor statements had been obtained and that the information on the report was correct. She noted that Alternative B of proposed Rule Amendment #7 would remove language requiring certification that all contributor statements had been received — which assumed passage of proposed Rule Amendment #9. Alternative A, she said, would conform the certification to current law – that contributor statements be received within 10 days of acceptance of a contribution.

Bingham said it was his understanding that in an audit the Commission would still have the power to ask the investigator to obtain from the person in charge of that campaign committee documentation of the three written requests, and that they would either produce them or not.

The Chair stated his disagreement with the Resolution and proposed Rule Amendment #9. He thought they would create an impediment to full disclosure, accountability, and openness in government. He also objected to failure to use the term “good faith” in the amendment to describe the written attempts.

The Chair gave the following scenario. “Suppose an influential individual wanted to contribute to two candidates for the same office but wanted to remain anonymous. Now, maybe that’s rare that it happens, but I’m confident that sometimes it does. And so, he could make a similar contribution to each candidate and not submit a card or a statement. And, the treasurer of each campaign could make an attempt — perhaps a halfhearted attempt — three times without certification and no statement ever appears. The candidate will be able then to use those funds that have been given to him for his campaign purposes. The donor can remain anonymous, and the efforts of the Ethics Commission in investigating these matters would be frustrated.”

The Chair’s opposition to both the Resolution and amendment was based on the following flaws: that the public, consisting of the voters and citizens, would be deprived of the right to know who was supporting which candidates; that attempts to investigate would be frustrated; that there was no provision requiring a “good faith” attempt even though the synopsis of the Rule called for it; that there was no provision for a certification by candidates or treasurers of their “good faith” efforts; and that there was no provision for a determination by the Ethics Commission that attempts were made in “good faith”.

Pettigrew

Pettigrew recommended that, in proposed Rule Amendment #9, the last paragraph, second line, following “the treasurer shall make at least three”, the words “good faith efforts” be added. Further, that the “written, good faith” efforts language also be added to the Resolution. She opposed changing the intent of the Rule passed in January. She understood, and felt that others attending had understood, that the original amendment and its interpretation were that a committee had three opportunities to get a contributor statement. She thought the sole purpose of proposed Rule Amendment #9 and the Resolution was to clarify the rule passed in January. She continued to call for adoption of both.

The Chair stated his view that it would be bad policy for the Commission to announce a year in advance, by adopting the amendment and Resolution, that it would not enforce an existing Rule when the amendment might never become an effective Rule.

Pettigrew stated that, with three written, good faith efforts to get the contributor card, committees would have the contributor names for emails or letters.

Discussion was then held on whether an existing rule required anything other than the contributor name. Hughes advised that Section 257:10-1-14(a)(3)(D) of the Rules required the name and address, occupation and employer or principle business activity, of each contributor over \$50 [\$200 for out-of-state and federal committees].

Slater

Slater pointed out that information was often available orally or from a written instrument. Checks also invariably had a telephone number which could be used to obtain the contributor statement. Nothing in the rule amendment, he said, permitted anonymous contributions.

Further discussion was held. Slater advised that the Federal Election Commission required the same information for contributions in excess of \$200 but without the requirement for a contributor statement.

In response to the Chair's question, Slater said, "If you want to come in on the rule that requires the treasurer to certify that they have contributor statements and add language in there where they also certify that they either have a contributor statement or they have made the three good faith efforts required by this rule, that would be fine."

The Chair indicated that without the contributor statement there was a break in the chain of custody because there would be no signature of the donor certifying that he in fact made the contribution.

Slater noted that the contributor statement was neither certified nor notarized. He did not think it was particularly good evidence that the money was the contributor's.

McKinney

McKinney said that unless a contribution was in the form of a cashier's check, the written instrument provided the name, address and telephone number.

The Chair emphasized the importance of having a signature on a contributor statement, notarized or not, to present to a witness.

McKinney asked what the contributor statement did if the treasurer already had the address, the telephone number and identification of that individual whether by driver's license or passport.

Adams

Adams gave the history of the requirement. She explained it arose out of the David Walter's campaign of 1994. In that case the Grand Jury heard that a wealthy contributor — wanting to put, for example, \$50,000 into the campaign when \$5,000 was the limit — would give \$5,000 to the butler, \$5,000 to the maid, \$5,000 to the gardener, etc., for them to contribute in their own names. The practice constituted money laundering or giving by straw donors without reporting the actual source of the contribution.

The Grand Jury, she said, had recommended a signed contributor statement which would attest that the contributor had not been reimbursed or compensated and was giving out of his or her own funds.

The contributor statement, Adams explained, leaves the candidate free and clear of bad faith allegations and gives the candidate a document to rely on should there be an investigation. The document also discloses the occupation and employer information, with which a committee could figure out where its message was best being heard; it allows the committee to better shepherd campaign resources to areas where the message was needed, and it creates a data base with expanding information. For these reasons, she said, some candidates have expressed appreciation for the contributor statement.

Adams advised the document was also a valuable prosecution tool. Contributors who signed the contributor statement, but who had been reimbursed or compensated — causing the actual contributor to exceed the contribution limit, could be cross-examined and prosecuted for falsely certifying the document.

Linda Grey Murphy
[“Murphy”]

Murphy was identified and stated she was the treasurer of the Oklahoma Democratic Party and someone who had “done” compliance all over the United States for the last 20 years. She claimed to understand the Governor Walters issue and acknowledged there were cases where people did try to break the rules. However, she thought the majority of candidates were just trying to raise money to get elected. Rather than trying to hide anything, she thought people were just lazy. She recommended proceeding like the FEC which, when the employer and occupation were not given, sent a letter and harassed the committee until they provided the information.

Murphy acknowledged that legally, in a small minority of cases, the contributor statement was needed. But, she thought, if people were going to lie and cheat, they would do so regardless of what they signed.

As a political consultant for 25 years, Murphy said, notwithstanding legal requirements, campaigns did not care where the money came from nor who the contributors' employers were. And, she did not think the contributor statement made the public any more aware of what was going on.

Next, Murphy criticized the electronic filing system because other campaign software could not upload data into it. She thought the contributor statement requirement made campaigns jump through useless hoops. She felt people would cease wanting to help candidates if the three written, good faith efforts were required.

Bingham

Bingham explained that, under the former rule, if you did not obtain a signed completed contributor statement, the candidate had to give the contribution back. He thought that, although there was value to the contributor statement, that value was outweighed by the price that the candidate would have to pay of giving back the contribution because for whatever reason the contributor would not sign or return the statement.

As a compromise, Bingham said he had accepted the amendment that the campaign could at least make three good faith efforts. If the campaign could not get the card, they did not have to forfeit the contribution. The C-1R form would still require the donor's name, address, employer and occupation. He felt that money laundering and straw donor donations would still be discoverable from the C-1R form regardless of whether or not the campaign got the contributor statement.

Loy

Loy expressed concern about the words "good faith". While he felt the Commission should not do things purposefully to make it harder for people to run for office, judging from members' experience, there were those who were "not at all bashful" about taking advantage of the "tiniest loophole" which this amendment would close.

Raley

The Chair responded to Murphy by saying he agreed that only a small percentage of candidates try to get around the rule. However, he thought the contributor statement was a very valuable tool in the courtroom because it was a direct connection between the donor and the candidate. In his opinion, if a candidate was going to receive money to run his campaign, the candidate must assume the responsibility of "paying the freight" by obtaining the statement. He did not think a candidate should have the benefit of retaining the money and not providing the evidence.

Pettigrew

Pettigrew reiterated that a vote had been taken in January where many present thought the original amendment had excused a committee from obtaining the statement after three written efforts were made. She felt it was a disservice to the people who offered public comment on the amendment to “start over” on the proposed rule. She then offered proposals for changing the wording on both the rule and the Resolution.

Motion on proposed Rule Amendment #9 Deferred to September

The Chair asked about the propriety of voting before having the changes available for review. Pettigrew agreed to defer the vote. With the consent of McKinney who made the motion and Loy who seconded it, a vote on the motion was deferred to the next meeting.

Discussion of a Comprehensive Review of Ethics Rules

No discussion took place on a comprehensive review of ethics rules; therefore, no action was necessary.

Discussion on Whether to Amend the Commission’s Archiving Schedule for Disclosure Documents

The Chair called on McKinney to report on his conversation with Charles Knight [“Knight”], Information Systems Network Administrator for the Commission, and to make recommendations on the archiving schedule for disclosure documents.

McKinney reported Knight had contacted MidCon and the Department of Libraries. Both charged the same amount or \$0.25 per case. The discrepancy was in requesting information, with MidCon charging more to pull records. But, he thought the person requesting the information had to pay. He advised Knight was also checking with Business Imaging Systems about digitizing the records, but he felt that would be extremely expensive. Considering the Commission’s budget, he recommended leaving the records at the Department of Libraries.

Staff concurred with the recommendation. No action was necessary.

Discussion on Whether to Request that the Legislature Change the Assessment Statute to Allow Commission to Keep Late Fees as Appropriated Monies in Revolving Fund

The next item was discussion on whether to request that the Legislature change the assessment statute to allow the Commission to keep late fees as appropriated monies in its Revolving Fund.

Bryant reported that the action would provide little revenue. With what it would cost the Commission to assess late fees and what would be collected, she thought it would be a wash. She acknowledged the Commission was required to assess late fees. However, she reported, there was no staff time to do them. She suggested a better way to increase funds might be to increase lobbyist and PAC registration fees.

The Chair asked how much revenue could be anticipated? Bryant answered \$10,000 to \$20,000 to \$30,000 a year; however, she felt the cost for the staff to assess late fees exceeded these amounts.

Bingham asked if current staff had time, assuming it was profitable, to assess the fees. Bryant answered this summer should have been a slow time for catching up, but she had been swamped. This fall, she thought, would be even busier and 2010, an election year, much worse. Bryant said one employee, whose sole job was to assess late fees, would be needed. No action was taken.

Approval of Minutes

Next was consideration of and discussion on whether to adopt the Minutes [both open and closed sessions] of the Regular Meeting held June 19, 2009. Pettigrew moved adoption of both the regular and executive session minutes for the meeting held June 19, 2009. Loy seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously, with Bingham abstaining because he had not been present.

Hughes asked whether the condensed format was preferred. By consensus, all members preferred the abbreviated version.

Ratification of Expenditures

The Chair then called for consideration of agency expenditures for the period beginning June 1, 2009, through and including June 30, 2009 and July 1 through and including July 31, 2009.

Bingham moved their ratification. Pettigrew expressed her appreciation for Bryant's preparation of reports on revenue to and from both appropriated monies and the revolving fund in light of the possibility of more serious cuts due to a budget shortfall. The Chair concurred. Loy seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously.

Consideration of FY-2011 Budget Request

The next item on the agenda was consideration of the following items to be included in the Commission's Fiscal Year 2011 Budget Request:

**ETHICS COMMISSION
FY-2011 BUDGET REQUEST ITEMS**

#1	Hire an Auditor/Investigator (4248)	84,000
	(50,000 salary + 30,000 benefits + 4,000 furniture/equipment)	

#2	Hire an Attorney III (1615) (60,000 salary + 33,000 benefits + 4,000 furniture/equipment)	97,000
#3	Hire a Legal Secretary II (E25B) (35,000 salary + 27,000 benefits + 4,000 furniture/equipment)	66,000
#4	Hire a Training Specialist (C41B) (38,000 salary + 28,000 benefits + 4,000 furniture/equipment)	70,000
#5	Hire an Administrative Assistant I (E17A) (31,000 salary + 26,000 benefits + 4,000 furniture/equipment)	61,000
#6	Increase office space by 100% (includes design and renovation 42,000 + 3,000 moving + 5,000 furniture/equipment)	50,000

Note: Item #6 assumes office space is in State Capitol. It does not include rent/utilities

TOTAL **\$428,000**

Pettigrew asked about the \$50,000 renovation costs and whether the Commission had any indication its offices would be moved to new quarters within the Capitol.

Hughes said there had been discussion which she was not free to divulge, but she thought it would be in the Capitol. She said the Commission had been budgeting \$37,000 for a number of years for renovation, but staff had increased that amount to \$50,000 due to the increase in costs. She said the costs would depend on where the offices would be moved, how the space would need to be reconfigured, how many new employees would be authorized, and what their office requirements would be. Hughes thought \$50,000 was a conservative figure.

Pettigrew then commented on the Commission's Budget Hearing during which the Executive Director was questioned on the priority order of the requests. She suggested the Commission go into more depth about the order at the next meeting. Bryant explained the budget was due October 1, and she needed the whole month of September to work on it, but she thought she could make changes in the order if the meeting were scheduled early in the month.

Hughes explained the main concern at the budget review hearing had been the fact that space was a priority before adding people. Since space was not needed without additional people, the priorities had been changed for Fiscal Year 2011 so that additional people were priorities before space. But, she said, the two were interdependent. The order of the people requested was the same as in Fiscal Year 2010 except for reversing the space.

The Chair commented that the distinction the appropriations committee had tried to make was inappropriate. Between space and personnel, he thought, it was a chicken and egg situation. Both of them had priority, and both of them were dependent upon each other.

The Chair said members needed to carefully itemize and categorize the requested items. Whether space or personnel, all items were equally important.

Pettigrew said the reality was the Commission would not receive an increase of \$428,000. But, she thought, it was good the things needed were requested whether or not the money was appropriated.

The Chair stated it was very important for the Commission's credibility to continue to ask for the things that have been requested for years. "It's ironic" he stated, "that there are fat years and lean years. And, in the lean years we've been cut. And in the fat years we've been ignored." Each category was important, but he felt the proper order should be considered. While the budget items were approved by general consensus, the task of establishing the order was continued for the next meeting.

Administrative Report

There were no changes, and no action was required on the administrative report.

Closed/Executive Session
for Consideration of the
Confidential Matters Set
Forth on the Agenda

The next item was a proposed closed/executive session, authorized and required by Title 25 O.S. 2001, Section 307(B)(4) and (7); Constitutional Ethics Rules [supra], Sections 257:1-1-6(h), (i), (j), (k) and (l); 257:30-1-2, 30-1-3, 30-1-4, 30-1-5 and 30-1-6; OAR 258:25-1-4.

The Chairman called for advice from the General Counsel on the lawfulness of the proposed executive session. Adams stated the items set forth in this item of the agenda were made confidential by law. She further stated, "It is the advice of your General Counsel that disclosure of these items would seriously impair the ability of the Commission to

process claims or conduct a pending investigation or discuss the Commission's litigation or proceed in the public interest. It is therefore my advice that the Commission go into executive session for the limited purpose of these listed matters."

Action followed. Bingham moved that the Commission find, upon the advice of the general counsel, that disclosure of any of the items listed for consideration in executive session would seriously impair the ability of the Commission to process claims or conduct a pending investigation or discuss the Commission's litigation or proceed in the public interest. McKinney seconded the motion. Roll was called for the vote. The motion unanimously passed.

Bingham then moved to go into closed executive session. Loy seconded the motion. Roll was called for the vote. The motion unanimously passed.

The Chair declared that, once the observers left the room, the meeting would stand in closed/executive session for the limited purposes of considering the cited matters. After the room was emptied, except for the Commissioners and staff, a "closed session" sign was posted on the door, and the session began.

Open Session/Action on
Same

When completed, the "closed session" sign was removed, and observers returned to the room. Pettigrew moved to go back into open session. McKinney seconded. Roll was called for the vote. The motion passed unanimously.

Bingham moved that, with respect to IU-2009-003, the matter be continued and that staff be directed to proceed as discussed in executive session; on IV-2009-2004, that the Commission table the matter and direct staff to proceed administratively; on IV-2009-005, that the Commission table the matter and direct staff to proceed administratively; that on IU-2009-007, the Commission refer the matter to the appropriate prosecutorial authority; and that on IV-2009-008, the Commission open an investigation and give authorization and authority for the issuance and service of subpoenas.

At Adams' suggestion, Bingham amended his motion on IV-2009-008 to include that the Commission find that there was a reasonable basis to believe that a Rule violation had occurred within the county that was discussed in executive session; that based on that finding the Commission open an investigation into the matter; and that staff have the

authority to issue and enforce and serve subpoenas in the course of that investigation.

Loy seconded Bingham's motion as amended. Roll was called for the vote, and the motion passed unanimously.

Adams read the following: "that the Commission refer IU-2009-006 to the appropriate prosecuting authority; and that the Commission table IV-2009-009 and direct staff to proceed administratively". McKinney so moved. Pettigrew seconded the motion. Roll was called for the vote, and the motion passed unanimously with Bingham abstaining because he had disqualified himself from the matter.

New Business

There was no new business.

Next Meeting

The Chair announced the next meeting was scheduled for September 11, 2009, at 10:00 a.m. Pettigrew advised she would be unable to meet September 11. Hughes said the meeting would be rescheduled.

Adjournment

Bingham moved to adjourn. McKinney seconded the motion. Roll was called for the vote. The motion passed unanimously. The meeting stood adjourned.


MARILYN HUGHES, Executive Director

Approved on Behalf of the Commission:


JOHN RALEY, Chair
MH/pb