

TRANSCRIPT
of the
ETHICS COMMISSION
STATE OF OKLAHOMA
BUDGET REQUEST HEARING
held
JANUARY 21, 2009

Chairmen

The Honorable Guy Liebmann ["Liebmann"], Chair of the Appropriations Subcommittee on General Government & Transportation presided over the budget request hearing which was held on Wednesday, January 21, at 1:30 pm, in Room 108 State Capitol Building, Oklahoma City, Oklahoma. The Honorable Ken Miller ["Miller"], Chair of the House Appropriations Committee, also attended.

Commission Members and Staff

Commissioners present were: Vice Chair Jo Pettigrew ["Pettigrew"], Don Bingham ["Bingham"], and James Loy. Commission staff members present were: Marilyn Hughes ["Hughes"], Executive Director; Rebecca Adams ["Adams"], General Counsel; and Patricia Bryant ["Bryant"], Principal Assistant.

Hughes

Our highest priority should have been last year, and is this year, more FTE. And, I've been asked to stress, by at least two commissioners, that the Commission would like to see more FTE authorized regardless of whether funding is given for additional FTE. We'd like to be able to add the FTE at some point in time that we actually have more than seven allowed.

Liebmann

Could I interrupt you to ask you one question? Where do you want us to, or where do you recommend that we get the money in this tight year?

Hughes

As I say, if the money can't be found, then we'd like at least the statute to reflect additional FTE.

Liebmann

But, you've asked for it.

Hughes

Yes, we've asked for it.

Liebmann

Thank you. But, you don't have a recommendation of where

we get the money.

Hughes

No, sir. I'm sure that you're a lot better at that than I am. We operate on a shoestring. We don't know the whole, overall budget, so we'll leave that to you.

Our first request was to hire an additional auditor and investigator. Reasons for that are the complexity of our investigations. We have several times been faced with investigations that required more staff time than we had — sometimes the possibility of hundreds of witnesses in a single case.

And, in case the members think that the alternative is to kind of hand off these cases to the criminal prosecutor, I'd like to clarify that all ethics rules do not have criminal counterparts. They just are civil penalty ethics rules. And, the only authority to enforce them rests with the Ethics Commission, not a criminal prosecuting authority. So, if the Commission does not prosecute them, then they're lost. They're not enforced.

The second request, priority two, is to hire an attorney III, and this would be a full-time prosecutor. As we've said, the Commission has a duty under the Constitution to prosecute ethics violations of its Rules in District Court. It has direct, independent and stand alone prosecutorial authority, and it's the only entity to do so.

The third priority is to hire a legal secretary II. Currently, neither the General Counsel nor the Investigator nor the Executive Director have any clerk to handle their work. They do their own. This person would be responsible for all court drafts and would assist those three and any additional FTE that you can — the other two that we've asked for.

Priority four is to hire a training specialist — not only for the area of ethics violations, but also campaign finance — to train in the areas of new campaigns, new candidates, and also, all of the various 40 to 50,000 state employees across the state in what the ethics rules require.

The fifth priority is to hire an administrative assistant primarily responsible for assisting the repository — filing of reports. The Commission has authority to assess, for all reports and statements, for

each day that they remain late up to a maximum of 10 days. The only report that they do not have authority to assess for are lobbyist reports.

Another duty would be to put county reports online. We are working on that for the current election year, 2008. They are not conducive to electronic filing. Their figures don't add up, so it would be very difficult to develop an electronic filing system for county reports unless the requirements for reporting were changed statutorily. So, we'd like to get those online so that they can be accessed in the localities where these people are running for office.

The next priority, which we talked about a great deal in the last hearing, would be increased office space to allow for these additional employees and for all of the various files that we generate as a commission. With that, I'll answer questions.

Miller

This is really a continuation of last week. As I did before earlier, I want to publicly apologize to you for having you stand for the length of time that we did last week. As I mentioned to Ms. Hughes, I think the time probably passed a lot faster for us, who were sitting down, than for her. And so, we should have offered you a seat. So, my apologies for asking you to stand for that length of time. Would you like to have a seat?

Hughes

I will if I need to. Thank you very much. I appreciate that.

Miller

I would like to thank you again for being present for this budget request hearing. I would like to thank the commissioners for being here again. I believe that last week was extremely helpful for members of this committee, for the Commission staff, and I also think, very much so, for the commissioners.

I do believe, as Representative Reynolds said last week, that he was very happy to see this taking place in the sunshine because that's the way government should work. But, unfortunately, with this particular government entity — the Ethics Commission — there's a lot of hesitancy sometimes. A lot of times, legislative members — because of the way it will be portrayed in the press — are somewhat reticent to question rules or efficiencies from the Commission.

And, I think it's time that we took that responsibility seriously and openly like we did last week and this week. And so, I appreciate

the Chairman for allowing us and for the members making a place for it, as well.

This particular meeting is about looking forward, not backward, and we certainly will do that. However, we have to look backward a little bit for an explanation of what we think will happen henceforth.

My questions that I've prepared, I'm going to read a few, and that may spawn some others. One thing that's just readily noticeable right off the bat is that the funding priorities for the next fiscal year are exactly flip-flopped from what they were just 12 months ago. And, I think that's interesting.

One thing — I would like to remind us all that were here last week is when I made the comment that I felt like — based on your explanation and that the priorities that had been listed at the top were no longer priorities — I made the comment that I felt like the Legislature had done a pretty good job of funding the Commission. And, I asked if you would not agree. And, the simple answer to that, Ms. Hughes, was, "Yes, I would agree."

That's what you told me last week, and I just want to remind everyone here that there has been much talk of funding and lawsuits against the Legislature for improper funding, but yet last week, you agreed that the Legislature had done a good job in funding your priorities so much so that those items that were priorities 12 months ago are no longer priorities. And, I just want to set that for the record.

My first question is this. During last week's performance review meeting, you said your top three budget priorities had either been met, put on hold or cancelled. Operating expenses have been increased by \$39,157. The additional office space requested is pending. And, the information technology improvements have either been made or cancelled.

You then agreed that, with the additional \$150,000 provided by the Legislature, your agency had been properly funded for FY-09. Is that your testimony again today?

Hughes

For those priorities, yes.

Miller

Thank you. As has been stated, your agency received a 30%

increase in funding for FY-09, the largest of any agency. Of the \$150,000 in additional funds, \$50,000 of that was for a one-time purpose that was then vetoed by Governor Henry. The increase to your base-level budget again, would be \$100,000, would you agree to that, as well?

Hughes Yes, however, when it was vetoed, that made the baseline \$150,000.

Miller Well, that's why I asked your opinion of that. My understanding is that you had a one-time expenditure, that the one-time expenditure is not then added to you base.

Hughes This one-time expenditure was not requested by the Commission, and it was vetoed by the Governor for the one-time. So, we assumed it was a \$150,000 baseline increase.

Miller Can you see where there might be differing opinions on that.

Hughes Certainly. That's the way we interpreted it. And, certainly, opinions can differ.

Miller We don't face that just with the Ethics Commission. We face that a lot with one-time funding where it seems to, with many agencies, be a misunderstanding or miscommunication that what was clearly stated as a one-time expenditure for software, the expectation is that it's a base-level increase.

Whether it was requested by the Commission or not, I don't think that changes the nature of the expense or the category of the expense. A one-time expenditure for software, in my opinion, is not a base-level increase.

Hughes Then it would have been a 20% increase rather than a 30%, correct?

Miller Well, it would have been a 30% increase in your funding year over year, but a 20% in your ongoing base.

My next question is, your FY-10 priority two funding request is to hire an attorney at a cost of \$91,000. Given the economic downturn and the revenue gap that we're currently facing, the reality is that it

would be difficult to provide additional funding for any state agency or entity no matter how good or well-intended the purpose.

My question is this. If you were really in dire need of an additional FTE for legal support staff, wouldn't you have employed some of the discretionary funding you received for FY-09 to contract with outside counsel?

Hughes

That would have been a decision for the Commission on any individual case. As has been explained, it's very difficult to hire outside counsel for the Commission. It usually costs as much as a full-time attorney to do so. And, it did not have FTE to have hired one. It would have been up to the Commission to bring the case and then to hire an attorney to handle that case.

Miller

Do you use outside counsel currently?

Hughes

No.

Miller

So, all of the questioning of Legislators for late filing fees is done by in-house attorneys?

Hughes

Late filing of fees are handled as assessments automatically. They're really not part of the investigatory or prosecutorial process.

Miller

Unless its appealed, correct?

Hughes

It's still just an administrative hearing before the Commission.

Miller

Who conducts that administrative hearing?

Hughes

It's conducted before the Commission. There is no administrative hearing officer. That procedure was actually set up in the original Ethics Commission Act.

Miller

Is there not an attorney, I believe from Edmond, that contracts with ...

Hughes

He does the initial administrative hearing, not the appeal.

Miller

So, there is an outside attorney used.

Hughes

There is an outside attorney used. I'm sorry. I was confused

public reprimand or go through anything that becomes public. And, these cases also deserve to be handled properly. And, they deserve a thorough examination because both sides deserve due process of law.

Many times what the Commission does is not open to the public. The public never knows the extensive amount of investigation that went into something that never came to light.

Miller

I understand that, certainly, there's confidentiality with legal work. And, I think what would have demonstrated a great deal to me, and I believe this committee, is if your staff was as overburdened as you say that they are, a very good demonstration of that would have been hiring outside counsel and outside clerical staff to help reduce your workload with the additional \$105,000 that you would have had over and above your priority number four of a \$45,000 increase for raises.

That would have demonstrated a great deal to me the true need. The lack of doing so leaves me very concerned that the true need is actually there, and I think that what I've seen, and many others in the Legislature see in agencies, is an insatiable desire to grow government. And, I think a lot of times, we get into agency-think, and we don't think there's a better way to do something because this is the way we've always done it.

When we look at the business practices out in the real world, we see out-sourcing going on more and more, so every day there are better ways to more efficiently run businesses. And, we've got to find better ways to run government, as well, especially in a year like this. And so, I want to challenge the Commission to look for better, more efficient ways instead of saying this is the way that we've always done it.

My next question is regarding the office space — the increased office space request by 100%. You state that, even with no new FTEs, the Ethics Commission requires more room for current employees. Once again, why didn't you employ some of the additional monies that you received in your FY-09 funding to secure office space for the existing staff?

Hughes

Well, because the Commission does not feel it is cost-efficient to move twice. In other words, until we get additional FTE which has been — and, I'm sorry that we did not make it the top priority last year

on our budget request, but it has been the top priority — adding an investigator and adding an attorney has been the top priority for the last few years. And, until we add those, then space is something that can wait, or we might have to move twice.

We have also explained that we have tried to move in the State Capitol. If the Legislature has changed its opinion about where we should be, we can always look for space outside the State Capitol. But, for right now, we've been told that you want us here for convenience sake. So, we've tried to find space here.

We tried Central Services on the first floor. They made that into a meeting room. We tried the Attorney General's office that is now an art gallery and offices for someone else. Above my head is a theater that I've seen used once. Directly over my head are four drains for Java Dave's. So, I'm at a loss as to why we can't be designated some space in the Capitol somewhere.

Miller

I am not aware of the directive to stay in the Capitol myself. That may be the case among some. I don't know of it. Where is that directive coming from?

Hughes

That was from leadership for several years. I will certainly acknowledge that it hasn't been the current leadership.

Miller

Of course, being a budget request for this upcoming fiscal year, you say even with no new FTEs, you still need the additional space, so are you saying now that you would like to move even if it means moving twice?

Hughes

If space opened up in the Capitol, certainly we'd like it. I mean, unless you have changed, and we'd welcome communication to that effect.

Miller

I guess what I'm getting at is you say it would be inefficient to move twice, which is why you did not use some of the additional monies last year to get office space, but this year, you're still making that request.

Hughes

We certainly would have used it had we been given space.

Miller

Was there any attempt to seek space outside the Capitol?

Miller

Okay. So, you would prefer to stay where you are — because what the priority says is, even if no new FTE is given, the Ethics Commission requires more room for current employees. We know space isn't available in the Capitol. We know the only way to meet that request is if you move out of the Capitol. So, you're telling me today, I'd rather you wait until space is available.

Hughes

I would invite any other comment from the commissioners or staff — if you would like to make them — if you disagree.

Pettigrew

Now, this has not been taken before the current Commission, but as an individual commissioner, I think we should stay here. If there's any option of maybe getting other space here or, at least, that it be considered later, and also because I think there is an importance of being accessible to the legislative body.

Miller

Again, I hope I'm not trying to belabor the point, I'm just trying to get at what your request is. So, I think I understand now that if there's no space available, you may want to talk about this later, but that you may prefer to just stay put until space becomes available.

I just want to ask a question about increasing the FTE. You said even if there isn't money for it, so even if we don't fund it, you still want us to increase the FTE. My question is what good is that?

Hughes

We don't know. But, last year we had funding, but we couldn't add another FTE. And, we would have done so had we had an additional FTE allowed by statute. Two commissioners especially asked me to request that.

Miller

So, I guess I would like for the Commission to communicate to the committee their belief or their — why it would be a good idea for additional FTE if there aren't funds to go with it.

Hughes

There are several large agencies that have 30 or 40 FTEs that aren't filled currently. But, if they got funding from whatever source, they could fill them.

Miller

Well, I think one of those is probably the Department of Corrections, and those are funded. They just can't find people to take them.

Hughes

I understand the Department of Human Services has some that

aren't filled, too.

Miller

Well, I guess I could understand that better if there's more explanation as to how that would help you to give you an unfunded FTE.

Liebmann

Let me say, I've got several departments that have more FTEs than are filled, and those have been inherited. We've cut them a little bit each year, but it's going to be past history — of where we were at one time when we had more FTEs, and maybe computers have replaced a bunch of people or something — that they're still there. We're working them down. But, it's from the old school.

Miller

Getting to my last question. There has been a request for \$380,000 in new funding for FY-10. Certainly, we know what the revenue picture is. We know that most agencies probably are bracing for Fiscal Year '10. Can you explain to us how the Legislature can be confident that the Ethics Commission would spend any new FY-10 funds for the purposes listed in the agency's official budget request document since that was not the case last year?

Hughes

Well, I think the FTE has been the top priority, and if the FTE are there, then they're certainly going to spend that money for new FTE.

Miller

If all of the money had not been spent last year on raises, would there not be money available, if an FTE was requested and granted, this year?

Hughes

We had some carryover and would have had more carryover, that's true.

Miller

\$105,000 worth of carryover, which is more than the needed funds to hire that additional FTE.

Liebmann

My goal would be to try to lessen your workload here where we don't have a lot of funds to finance anything. And, I don't know what the Governor's budget is going to look like. But, I'm hearing things that it's going to be pretty tight, and we're going to have to cut back a little bit. Would it be possible for you and your Commission to consider letting the county do their own reports, like Oklahoma City and, I'm sure, Tulsa does, and take that county workload off you? Is that possible?

disclosure, better compliance with the ethics rules. In other words, the Constitutional Ethics Rules could perform the functions it was meant to from the beginning. We've operated on a shoestring budget for a number of years. We have managed to be a repository. We've managed to try to educate. To a certain degree, we have managed to do some enforcement, but that's been low. The number of spot audits we do is not anywhere near 25% of what's filed.

I think it would bring more accountability to government, and that always is cost saving for the state. Most of the enforcement that's been done in Oklahoma has been done by the federal government rather than the state. And, the Ethics Commission does not...it's authority is not to put anyone in prison, but it can issue very stiff fines for activity that does not promote good government. And, we discourage impropriety. And, a lot of that is now being enforced by the federal government. And, maybe they're the ones with the money, but it would be something that this state could do with pride, and I think it would be beneficial to the state.

Liebmann

You know, I sit in the House chamber, and I look around, and I don't see any crooks, but I can read about them in the newspapers that they have dug things up on. But, among us, I don't really see anybody at my level — and, I would think that would probably be the case over in the Senate, too, but I don't know. I think you've cleaned the Senate out. But, there again, I don't know.

But, we have to justify this money to the public. You know, 3.8 million dollars every 10 years. Are we going to find that many crooks, do you think?

Hughes

3.8 million dollars over 10 years is not a great deal of money compared to the total overall budget.

Liebmann

No. Not compared to the overall budget of almost seven billion dollars, but based on your budget, it's a huge increase.

Hughes

Yes. It would be an increase. When the Commission was established, the first year's budget was \$100,000 with two employees.

Liebmann

But, tell me, are we going to find that many crooks if we spend that much more money?

Hughes

The sophistication of what the Commission is finding now, the

level has risen significantly. The investigations are more intense. They require more subpoenas, more time, more investigation. Yes, I think the value is there for the state.

Liebmann

Well, that's certainly interesting, and you know, that's a good opinion of yours. I can appreciate that. I was chairman of the Oklahoma City Water Utilities Trust for five years, and we outsourced a lot of engineering, a lot of lawsuits, which we had a lot of. I was also chairman of the EMSA trust for, I don't know — five or six years, that runs an ambulance service in Oklahoma City and Tulsa. And, we outsourced our lawsuits.

Now, it looks like that would be the way to pursue these extras that you don't have the money to budget. I'm going to call on Representative Brown now for his questions.

Brown

Director Hughes, do you believe that, without the additional funding for these attorneys, investigators, the transparency that we have in government right now — that there is a high likelihood that veil now is going to probably allow for ethical violations to occur without your knowledge?

Hughes

Do I think that there are ethical violations that occur without our knowledge now? I would say, yes. And, I would say that I'm not even saying that adding these employees is going to guarantee that the Commission is going to know about all of the violations. But, the ones they find out about, they're going to be able to pursue.

Brown

According to the policy issues there with House Bill 2196 — it's mentioned here over the accepting of contributions; that was passed, I believe, last year — has a fine of not more than \$1,000 or imprisonment. Is this taking on criminal intent? You were talking when I came in. I'm sorry I'm late, Mr. Chairman. But, is there in statute now provisions that allow for a split of civil penalties for the violation and criminal intent to be taken on by someone else — that you are not able to take on the criminal prosecutorial aspect of that offense is what I heard last week, that you are not able to do that. That you are able to assess the civil penalty there of up to \$50,000.

Hughes

House Bill 2196 was Representative Banz's bill? Is that correct? Dank, I'm sorry.

If we're talking about Title 21, Section 187.1 — the prohibition against lobbyists and lobbyist principals giving things of value during the session — the Commission has no jurisdiction to enforce that. That's in criminal statutes. There is no corresponding rule. That was passed by the Legislature. It's only enforced by DAs and the Attorney General. It is not an Ethics Commission rule. And, it gives the Commission no criminal jurisdiction whatsoever.

Brown

So then, if you are afforded the additional FTEs — the auditors, the investigators and the attorneys — and they find ethical violations as has been in the past, and no DA decides to prosecute that case, then your time is wasted.

Hughes

If it is a violation that is the giving of a contribution or accepting of a contribution from a lobbyist or lobbyist principal during session, during the dates in that bill, then, "no", the Commission cannot pursue that.

Brown

But, any criminal act that was done...

Hughes

The Commission can't enforce any criminal act. Period. It has no jurisdiction under the Constitution. It's only given civil.

The Honorable Steve Martin ["StMartin"]

Director Hughes, I'm interested in this workload aspect also, in that, essentially, would it be correct to characterize your agency as having two duties — one is to collect and maintain the campaign reports and the other being to investigate ethics violations. Is that an oversimplification?

Hughes

Well, the Constitution says that we adopt the rules of ethical conduct governing campaigns and governing the ethical conduct of state officers and state employees. So, the repository function falls under the ethical conduct of campaigns. And, the ethical conduct falls under the other.

StMartin

In a practical sense, would it not be safe to assume that your cost associated with gathering the reports of the candidates, your workload, must be reduced by the fact that it's been computerized? When someone wants to see, if I want to see Representative Shannon's ethics reports, I can go to the computer and pull it up instead of going down and having your employees make me a copy of them. So, that would have to reduce your workload to some extent. Would that be correct?

Hughes

It's changed it. We certainly don't need somebody to make copies all the time. And, we don't need somebody helping people look up things unless they just come in once and we teach them how to use the program at our computers at the front of the office.

But, the fact that they're using the electronic filing system means that we get different types of questions. We get different types of problems. We have to work people through choosing the wrong reporting date or having problems with the system that we have to work out or work out with our developer.

In other words, our workload hasn't lessened, but it has changed significantly. We really need more sophistication in our employees than we used to because we're not standing at a copier making copies. That one year, we made 55,000 copies in one year.

StMartin

As far as your investigating ethics violations, it's my understanding that you operate on complaints if someone comes to you with a complaint against a legislator. For instance, they believe that he or she violated an ethics rule. Or, sometimes you come across information, and you can generate the complaint yourself. Is that correct?

Hughes

The Commission can act on either anonymous or any information. But, they must do it with a unanimous vote. Otherwise, if it comes in the form of verified information — which you're referring to as a complaint, but we don't refer to it as a complaint until we file it in District Court — but, if it's verified by someone, it only takes a majority vote by the Commission to open an investigation.

StMartin

Alright. And, you have this year issued in the last two years three public reprimands. And, you had mentioned earlier, sometimes you do an investigation and determine that there is no reprimand called for. You've done the investigation, so it would be the equivalent of an indictment and have researched it and have determined that there is nothing there. Can you tell me about how many of those took place this last year?

Hughes

Not without looking at the numbers. I can certainly get them to you. I'd be happy to provide it.

Adams

Some of them carry over from one year to the next, and we'd have to count.

investigate, or did this Commission turn it over to another prosecuting agency to take a look at?

Hughes

I can't speak to ongoing investigations. I can't speak to anything that isn't public. I can tell you how many public reprimands we had. I can tell you how many referrals were made, but I can't speak to specific facts.

Bingham

Chairman Miller, I speak for myself, but I bet the other two commissioners would tell you it's been extremely informative for us to be here. And, we do appreciate the opportunity and the obviously hard work put in. And, if I may, without any specifics, there are, we have some very serious ethical violations that are not crimes. They don't fit under any criminal statute, but they are extremely serious; they are complex. All of us in this room would want them investigated if we knew what the accusation was.

Chairman Miller has raised a very important question. I don't know if someone got away with something because whenever there's an accusation made, we believe in the presumption of innocence. We don't assume that someone's guilty just because there's been a complaint or news story or something else.

But, as to serious ethical violations of our rules that don't amount to a crime — that don't fit a criminal statute, so we can't refer it to a law enforcement agency or a prosecutor — we've been stymied in some cases. That's not to say that we can make public allegations, and, I'm sorry, public money is at issue here. And, I think that this is a very healthy inquiry, and I would take this opportunity also to tell you that I appreciate Chairman Miller who has suggested to us efficiencies and some economies that we're looking at very seriously, and we would welcome suggestions either formally from the committee or from individual members. We take those seriously.

Miller

Thank you, Chairman Bingham. I appreciate your work and what you've done because I do think this is a healthy exercise. When we're talking about the seriousness and the complexity of cases that are very problematic but not rising to the level of a crime, my suggestion was, maybe it should be a crime. If we're talking about serious ethical violations, and people getting away with serious ethical breaches, to me, that should be a crime.

Because, I think I can speak for every member at this table, we want you to have the funds to hold people accountable. We want you to do what is necessary to find out the bad actors because, I tell you what, I and these folks, we're doing our very best to comply with these rules, and we want those that are not to be held accountable.

And so, we're saying, I'm taking this very seriously, Director Hughes, when you're saying that you don't have the funds and people are getting away with things, we need to look into that. Because if that is the case, I want to know about it. Now, I think we need to take that conversation further.

The Honorable Mike
Brown ["Brown"]

I would like to add one thing to Chairman Miller's comments. It's that if you had the funds, and statutes were changed to allow you to prosecute these cases that rise to the level that you say they do, would we have different outcomes from what happened in the past two years?

Hughes

I don't know what you mean by "if statutes were changed".

Brown

You're telling me that you do not have by statute the power to actually prosecute these criminal cases. And, some of these do not rise to the level of criminality that you say.

Hughes

But, they still need to be pursued in a civil manner.

Brown

But, if the statutes were to change these to a criminal aspect, as Chairman Miller says...

Hughes

Then, it would be the Attorney General or the DA who would pursue them, not the Ethics Commission, unless the Constitution were changed, and the Ethics Commission were given criminal [jurisdiction], but you don't need it because you've already got DAs and the Attorney General.

The Honorable Gary Banz
["Banz"]

Are there statute of limitations that would prohibit us from going back and closing the gap, so to speak, if we were to grant additional FTEs and resources, and you had the manpower — those that have been represented in a general sense — are they still opened to go back and be investigated and brought to the light of day, or is there a statute of limitations on how long that can go back?

Hughes

The Commission has set a three-year statute of limitations on

created to address these because, right now, in many situations the only thing that addresses them are the ethics rules. And, we can't hand them off to law enforcement or prosecutors because they don't fit any criminal statute, but they're still very serious in terms of the types of things the Rules address, and they are covered by the Rules.

Miller

It seems like we're looking at two different things here. One is what's being described as very complex, bad acting in an effort to skirt the laws and do things wrong on purpose, but yet, the most notable scheme involved free jewelry and an envelop full of cash, which is, quite frankly, not very complex.

On one hand, we're addressing that we need more investigating of very complex things, but then the Rules that we keep changing are just around the fringe. They're not addressing the core root problem. We're just creating words and not really accomplishing a mission. And so, it seems to me there's a disconnect.

We've had increasing bad actions, increasing complexity, increasing serious violations, but yet the Rules that we keep changing aren't addressing that. They're just creating these insignificant things that don't increase our accountability or disclosure as given in the ranking systems.

And, that's what we were trying to stress last week, and, I think, accurately reported by the reporters that are in this room — not so accurately reported by one particular source who seemed to report that Legislators have a great idea for saving money for the Ethics Commission. Don't hold us accountable.

That's not what was said last week. What was said last week was, let's make sure to match your Rules and your outcomes. Let's make sure that when we are changing a Rule, it's producing better government, more accountability, more disclosure. And, if it's not doing that, let's address it and see, do we really need to be doing this because doing this costs money, it costs time, it costs resources. Let's make sure that what we are doing is producing better outcomes and better government. If it's not, let's address it, and let's get to the real root of the problem, not these little bitty things.

Pettigrew

Mr. Chairman, may I address what Representative Miller stated. I also want to echo what Commissioner Bingham said. We appreciate the opportunity. We think this is good, and I wanted to add

that at least two of the things that you recommended last week, that might be saving some money, I'm bringing before the Commission next week for us to consider putting into our Rules for next year. So, let's keep the discussions open and try to make something positive from it.

Miller We need to keep them open.

Liebmann I have a couple of questions. Recent high profile questions — for instance, County Commissioner Brent Rinehart — did that investigation start in your office?

Hughes We can't comment on that.

Liebmann So, the others I have a question about, you can't comment on either, I suppose.

Hughes We can comment on anything that is public record.

Liebmann Well, it publicly made the newspaper some way or another.

The Honorable Mike Reynolds ["Reynolds"] I think I had a problem with pit bulls last year and had a bill passed that lost in the Legislature. In fact, it had your name on it, Mr. Chairman. And, I think I ran the wrong bill. It should have been "pit bull dental bill, and we could just pull their teeth." So, that would solve the problem of all pit bulls.

Can you comment on the case that's been prosecuted in federal court in Missouri? Can you comment on whether or not you were an instrumental part of the investigation and the prosecutions of Auditor McMahan and Mr. Phipps and Senator Stipe?

Hughes I was a witness.

Reynolds And, you couldn't have prosecuted that case, could you? You could only investigate the ethics violations.

Hughes Civil penalty ethics violations.

Reynolds Did you find that very complex?

Hughes That was very complex.

Reynolds

And, I would guess that it took a lot of your resources, but it probably didn't save Oklahoma a world of good. Would you agree with that?

Hughes

It took resources.

Reynolds

You commented earlier about outside legal counsel, but I think I understand what you were talking about there, and I just want to clarify it. You actually have to go to an administrative hearing officer, and that is not an attorney that fights on behalf of the Ethics Commission, but it's like an administrative law judge, and you have to pay for that administrative law judge, so to speak, just to bring things before him.

Hughes

Yes. We assess a late fee. A person can ask for a hearing. If they ask for a hearing, we have to grant the hearing, and we have to pay the administrative hearing officer.

Reynolds

And so, it's really not a prosecutor you're hiring, but it's a protection of a person, and you're having to fund that. So, everybody that protests, you have to pay that fee to that judge.

Hughes

That's correct, and we may never collect any late fee. We don't keep the late fees that we do collect. They go to the General Revenue Fund.

Reynolds

Right. Could you comment on whether or not you have turned over any cases, without being specific, to law enforcement authorities that were prosecuted when they were declined prosecution by other law enforcement authorities?

Hughes

I couldn't comment.

Reynolds

Are you aware that hundreds and hundreds of FTE that are authorized in bills are never filled? And, that's probably done by the good Representative from Edmond that's with us today. I think we have the Office of Personnel Management that listed all kinds of FTE allocations, and I was astounded at the number that were authorized. I can understand how it's kind of hard. One year you don't have the FTEs, they give you the money. The next year you don't have the money, they give you the FTEs. That can be a vicious circle, can't it?

Do you think we ought to get rid of the Department of Public Safety or Department of Corrections just because we are unfamiliar with any people personally that are criminals?

Hughes

No, sir.

Reynolds

There's an organization, called the Guthrie Humanities Council, and we funded them — the Legislature spent \$150,000 on the Pollard Theater — and then we also spent \$600,000 on a train that, I guess, was dilapidated and owned by ex-Senator Stipe, but the Ethics Commission probably can't comment if you had any part of that. But, do you think that \$750,000 might more appropriately have been spent enforcing the ethics laws in the State of Oklahoma?

Hughes

That's not the decision of the Ethics Commission

Reynolds

Are you aware of other agencies like these? J.M. Davis Gun Museum, the Will Rogers Memorial, the Commerce Department, and the museums like that they fund? Are any of those, to your knowledge, constitutional agencies?

Hughes

Not to my knowledge.

Reynolds

That's all, Mr. Chairman.

Miller

Thank you for those tough questions. I look forward to seeing your bill to do away with the Pollard Theater and J.M. Davis Museum

You know, much is made about the constitutional agency. I believe Wildlife is a constitutional agency. And, ABLE is a constitutional agency. I believe that they want more money.

In fact, I believe that every agency here, every agency that we have under the umbrella is going to ask for more funds this year for their agency than last year. And, our job is to set the tough priorities, and we can do better. In areas such as you suggested, Representative Reynolds, we can do better, we must do better this year when we have that opportunity.

I asked about the unfunded FTE for a reason. It is a strategy. I understand it is a strategy. I haven't been in this position very long, but I understand budget strategies from agencies, and it certainly is a strategy. Give us the FTE, and we'll come back next year and say you

gave us an unfunded position. Now, fund the position. So, I know how that works, as well.

On the conversation — we kind of got off in the weeds on investigations and the complexity a little bit — but, based on the statement saying that you believe that there's people getting away with things because of lack of resources, I find it even more complexing that we use money, \$105,000 or more, over and above your budget for raises, to fund raises that weren't necessary to keep employees that weren't leaving and not funding outside counsel and not funding outside investigators so that you can pursue those cases.

I find that extremely troubling especially in light of the conversation that we had. I cannot stress enough, Director Hughes and commissioners, the true desire that I have, and I know that many others have, that you have the resources to hold people accountable. But, I have a true desire for efficient government, as well.

And, I think that we — as you have to hold us all to the same standard — we have to hold you to the same standard. We don't need to just be more efficient with the Ethics Commission. We need to be more efficient with every agency under our umbrella. And, we can't exclude anyone, just like you would not exclude anyone.

I do have a question in here. Ms. Hughes, would you say that sometimes there are individuals who use the Commission for political purposes?

Hughes

I would say that does happen. I would also say that the Commission has been efficiently run since 1986. It has operated on a very, very, very small budget. It has never had the ability to go out and hire additional help without doing without.

We hired additional employees in 2006 trying to get things online. But, it was because we had a position that was vacant that we were able to do that. Some of the extra that we had carried over this year was because we did not fill a position. That's the only way we were able to do it, and if someone were to quit today, we would have a problem filling that position until we took care of our obligations toward that employee.

We have always run on a shoestring budget, and we've always been cognizant of taxpayer money

Miller

I understand that, Ms. Hughes, I truly do. And, I believe that you have a passion for what you do. And, I think that permeates throughout the Commission.

I also think that those in DHS have a passion for what they do. And, I believe that they believe they're being efficient. I think that the Department of Mental Health has a passion for what they do, and they believe they're being efficient. I think the Department of Central Services believes in what they're doing, and they believe they're being efficient.

And, I don't, I will never blame an agency for advocating for additional resources because that's your job. Our job is to step back and take the broader view of things and fund things to the best level we can given the limited resources that we have. But, my point and my question was about playing politics with the Ethics Commission.

Hughes

Oh, I think that does happen.

Miller

I think it does, too, and I think...

Hughes

The Commission is not, has no control over how the public reacts to information that it gets. A lot of times it has no control over what information it gets.

Miller

Right. I think some of the playing politics with the Commission could be remedied if you knew your accuser which you do in a court of law, but you don't at the Ethics Commission. But, that's a discussion for a different day. But, I would point out I think there is politics played with the Ethics Commission. I think there is grandstanding that is done on Ethics Commission issues. And, I think it's done routinely year after year by many people outside and inside of the Capitol.

And, I think that's unfortunate because I do believe, as you've stated, Chairman Bingham, that most people here are trying to do the best job they can to give government to the people of Oklahoma.

Brown

In some of the other hearings that took place, and just this morning, you mentioned that you do not retain your late fees? They go into the General Fund? Do all fees collected go into the General Fund?

- Bryant Late fees, yes.
- Hughes Copying fees go to us.
- Brown Is that the only fees you collect?
- Bryant The lobbyist registration fees and the PAC registration fees go to us, too.
- Brown But, all penalties goes to the General Revenue Fund.
- Hughes That's right.
- Reynolds Director, Representative Miller brought up an interesting point. I wanted to clarify it was not a misunderstanding. He said he thought someone ought to know who their accuser is. Isn't it true that the Ethics Commission tells people who their accuser is if an investigation is open?
- Hughes The Commission may open an investigation on any information it receives. It can be a newspaper article. There is no accuser.
- Reynolds I'm sorry. I meant in regard to formal accusations. When someone makes an accusation, ...
- Hughes If there is a verified, written complaint, it is provided.
- Reynolds Then the person who is the subject of that complaint knows who filed the complaint against them. Isn't that true?
- Hughes Yes.
- Reynolds And, that could then put the person that accused them in a very uncomfortable situation if someone wanted to go out and say they did it, because you have a Rule that prevents their accuser from publicly disclosing and defending themselves if they do that, don't you?
- Hughes We have a Rule that says you can talk about anything you knew when you walked into the office but not the fact that you filed an ethics complaint or information or anything you learned as a result of the investigation.
- Liebmann Well, I tell you, I could really be a team member if I knew

where these high profile cases started — if they did start in your office. But, if you can't disclose that, then that's, you know, I'll just sit back and listen. Thank you so much for being here today.

Hughes Thank you. I appreciate it very much.

Liebmann And, anytime you want to get together with this committee, we'd be glad to sit down with you again.

Hughes The commissioners and I are available whenever you would like.

Liebmann Good. Thank you very much.

Liebmann The Chairman of the subcommittee then called the next agency, and the Ethics Commission Budget Request Hearing ended.

MARILYN HUGHES, Executive Director

Approved On Behalf Of The Commission:

JOHN RALEY, Chair

MH/mh