

MINUTES OF REGULAR MEETING  
of the  
ETHICS COMMISSION  
STATE OF OKLAHOMA  
held  
JUNE 19, 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, June 19, 2009, at 10:00 a.m. Chairman John Raley ["Raley"] presided over the meeting which was held in Room 419C, State Capitol Building, Oklahoma City, Oklahoma.

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"] and James Loy ["Loy"]. 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: Neal Leader and Greg Metcalfe, Attorney General's Office; Lee Slater, attorney; Laurie Gaines and Rachel Barnes, Lee Slater's office; Scott Cooper, *Oklahoma Gazette*; Jeff Packham, *Journal Record*; Tres Savage, *ECapitol.Net*; Cheryl Purvis, Amy Alden and Rick Farmer, House staff; Arnold Hamilton, *Oklahoma Observer*; and Cathy Welch, Campaign Technologies.

Public comment on or  
request for Constitutional  
Rule Amendments

Next was a public hearing 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 June 19, 2009 Regular Meeting of the Ethics Commission, incorporated by reference in this agenda as fully set forth in the document.*

The first item on the agenda was a public hearing on proposed rules. Copies were made available.

Pettigrew on proposed Rule  
Amendment #1

Pettigrew reviewed the amendments she sponsored. Rule #1 was carried over from the January 2009 vote. She requested input on the proposal which would eliminate the requirement for an agent of a committee to provide a contribution to the treasurer or deputy treasurer of the committee within five days of receipt.

Pettigrew on proposed Rule  
Amendment #2

Rule #2 , also a carryover, would remove the obligation to send certain notices by first-class mail and would allow the option of sending them by email or first-class mail. Late letters would also be sent by first-class mail.

Pettigrew noted that the administrative report recommended eliminating some notices immediately in order to save money. She did not think that could be done. "I think we have an obligation to follow our rules, whether we like it or not, and we will send notices by certified mail as the current law reads. Not only is it one of our rules, but it is reinforced by a vote of 2 to 2 in January not to allow this. So, I think we have to wait for another year. It will be effective July of next year, assuming the Legislature approves it."

Discussion followed. The Chair asked for input from the staff on how this would affect their efforts over the remaining six months of the year.

Hughes reminded commissioners that the budget covered a full twelve months beginning July 1, 2009. She reported certified letters would cost approximately \$5.50 per letter. Bryant reported that certified mail for campaign reports would be \$2,500 versus \$500 for state candidates and PACs.

Pettigrew asked if it was in the Rules that the Commission would send certified mailings.

Hughes answered not in the Constitutional Ethics Rules but in the APA rules. Pettigrew stated she did not understand how the Commission could not comply.

The Chair asked staff to research the matter and prepare a memo on the costs. Pettigrew asked to discuss it at the budget agenda item.

Pettigrew on proposed Rule Amendment #7

Pettigrew addressed proposed Rule Amendment #7. She explained the purpose was to eliminate the requirement that a candidate verify by filing a Form C-VR that what was filed online or submitted on paper was accurate. She explained that in this computer age, electronic signatures should suffice.

Pettigrew on new proposed amendment #8

Pettigrew reported that Hughes had advised that when Section 257:10-1-2(c) was amended in January, the effect was not what she had understood. She thought that, effective July 1, a contributor statement would not be required if three unsuccessful efforts were made.

Pettigrew reported Hughes advised the amendment, instead, allowed an “incomplete” contributor statement to suffice if three efforts were made to obtain the information. Pettigrew announced she had asked Hughes to draft language for the August meeting to make it absolutely clear that the contributor statement was not required after the third written attempt.

Lee Slater

Lee Slater [“Slater”] expressed his understanding that the rule as adopted and discussed in public hearings specified that if three attempts were made and documented, either in writing or by electronic mail, to obtain a contributor statement, the filer would be in compliance. Slater then asked what the Commission’s interpretation of the amendment would be on July 1.

Discussion was held on the effective date of a new amendment and potential action of the Commission. The Director noted that the Commission could adopt the proposed new amendment in August along with a resolution that the current language would not be enforced pending action on the promulgated amendment. Such action would take place prior to the first report becoming due under the July 1 amendment.

Report on personal financial disclosure rating

At the Chair’s request Hughes gave an oral report on personal financial disclosure. As a prelude, she noted Oklahoma ranked #34 with an “F” grade from the Center for Public Integrity on its provisions relating to legislators. She advised that surrounding states fared better: Texas ranked #3, Arizona #5, Kansas #8, Arkansas #11, New Mexico #12, Missouri #17, and Colorado #25 — all significantly above Oklahoma.

Hughes noted in a handout the things that Oklahoma required and those that were not required. In two other handouts requested by Pettigrew, she pointed out differences in the rules submitted in 1994 and those disapproved in 1992. Those of significance were the \$1,000 versus \$5,000 disclosure threshold and gift reporting of \$1,000 and above versus no gift reporting.

Hughes advised the Model Law, adopted by the Council on Governmental Ethics Laws in 1990, contained both debt and loan disclosure. She acknowledged that laws had developed beyond the Commission's early 1990 drafts — as seen in the Louisiana form also available as a handout.

Louisiana's new ranking, pursuant to a law passed January 2008, was reported as 99 out of a possible 100 points on the survey. Its requirements included 12 schedules; exact amounts or ranges of reported income from less than \$5,000, \$5,000 to \$25,000, \$25,000 to \$100,000, or then more than \$100,000; debt disclosure; and whether state and federal taxes had been paid.

Louisiana also divided filers by tiers. Tier 1, the most extensive disclosure, was for statewide elective officers and cabinet secretaries. Tier 2 was for legislators and elected officials representing a voting district with a population over 5,000, candidates seeking office in a voting district with a population over 5,000, BESE members, Board of Ethics members, etc. Tier 2.1 was for board and commission members. Tier 3 was for elected officials representing less than 5,000 in their voting district.

Hughes noted many of the objections encountered in 1992 and 1993 were as a result of making the same provisions applicable to an unpaid volunteer who was appointed to a board or commission. This resulted in the F-1R for elected and compensated employees and the F-2R for uncompensated officers. Such objections would not apply to forms relating to statewide elective officers or legislators only.

The Chair thanked Hughes and voiced his concern that the Commission could not tolerate a failing grade in this vital area. He requested staff to prepare a rough draft of a comprehensive proposed rule by the August meeting.

Hughes noted that more extensive disclosure would require more people and more space. The Chair asked for an analysis of how changes

would impact the present staff in terms of energy, time, effort and monetary needs. No action was necessary.

Discussion on whether to adopt resolution on whether to enforce existing rules if amended by proposed Rule Amendment #5

The next item was discussion on whether to adopt a resolution on whether to enforce existing Rules if amended by proposed Rule Amendment #5. The Chair announced he would defer discussion on the amendment and resolution until the second open session of the morning and invited everyone to return after the closed session.

Discussion on verifying electronic filings

The next item was discussion on verifying electronic filings. Hughes noted that staff had submitted wordage in the administrative report for changing online filing to certify that the information was correct and the filer was appointed to file the reports for the committee — the first for filing a Statement of Organization and the second for filing Campaign Contributions and Expenditures Reports.

Pettigrew moved to adopt the language which was read aloud as follows:

For SO-1s and SO-2s: By submitting this registration to the Oklahoma Ethics Commission, I certify that the information is true and correct and that I am appointed to file campaign contributions and expenditures reports on behalf of this committee.

For C-1Rs, C-3Rs or C-4Rs: By submitting this report to the Oklahoma Ethics Commission, I certify that this is a true and correct record of this committees contribution and expenditure transactions and that I am appointed to file campaign contributions and expenditures reports on behalf of this committee.”

McKinney seconded the motion. Discussion was held. It was acknowledged that, until the rule requiring Form C-VR could be amended, it would continue to be required. The liability of the person required to make the filing versus the person hired to actually submit the document was also addressed.

There was no further discussion. Roll was called for purposes of the vote, and the motion passed unanimously.

Discussion of a comprehensive review of ethics rules

No additional suggestions were made for rule amendments, and no action was taken on a comprehensive review of ethics rules.

Discussion on whether to amend the Commission's archiving schedule for disclosure documents

Hughes reported that Charles Knight had further researched the subject of whether records had to be destroyed according to the final disposition schedule. He discovered that, in Oklahoma, the disposition schedule establishes a minimum amount of time the Commission must retain the records. The Commission may thus choose to retain records longer than required by the schedule. They also may maintain them in electronic format and destroy the paper at the end of the disposition schedule without being in violation of the schedule or the rules.

Loy asked if this was not an administrative decision. Hughes said the Commission needed to vote on the schedule which would then be submitted to the Archiving and Records Commission.

Pettigrew reported on another option in which the Corporation Commission worked with a company that stored their records and made them available either in paper form or electronic mail or on diskette. McKinney reported that MidCon Data provided the service not only for that Commission but for others in the state at a fairly low cost.

Discussion was held. Loy moved to reduce maintaining records from 42 years to 20 years. The Chair seconded the motion. McKinney questioned why research could not be conducted before the vote. The Chair, with Loy's approval, announced the motion and second were withdrawn. The staff was directed to conduct research on MidCon Data or similar services.

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. Pettigrew announced she was not ready to address the matter by motion or resolution. It will be placed on the agenda for the next meeting.

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 May 8, 2009. There were no corrections or amendments to the proposed drafts. McKinney moved their acceptance; Pettigrew seconded. Roll was called for purposes of the vote. The motion passed unanimously with Loy abstaining because he was not present at the May meeting.

Ratification of expenditures

The Chair then called for consideration of agency expenditures for the period beginning May 1, 2009, through and including May 31, 2009. Pettigrew moved for their ratification. McKinney seconded the motion.

Roll was called for purposes of the vote. The motion passed unanimously.

Consideration of FY-2010 budget work program including the seven percent [7%] cut from FY-2009 appropriation

The next item on the agenda was consideration of the Ethics Commission Fiscal Year 2010 Budget Work Program including the seven percent [7%] cut from FY-2009 appropriation.

Pettigrew stated she could not support the budget work program unless the rule requiring certified mail, rather than first class mail, was followed and booklets were printed for every elected official.

Hughes announced 250 booklets were being printed which would be sufficient to provide every Legislator and other statewide elective officers copies. Discussion was held on whether to continue sending certified late letters to campaign committees. Bryant was directed to increase the budget by \$2,500 to cover postage for this practice.

Discussion was held concerning the Revolving Fund. McKinney explained that most of the money the Commission was appropriated was applied to employee salaries. Operation funds were received from fees.

Loy questioned the amounts. Hughes reported in approximate numbers that \$40,000 per year came from lobbying registration fees, \$20,000 from PAC registration fees, \$15,000 to \$20,000 from school boards and municipalities, and \$2,000 from copying fees.

Bryant reported that the Revolving Fund was mainly used to pay bills. For simplicity, the bulk of payroll came from the General Revenue appropriation. However, part of payroll came from the Revolving Fund and some non-payroll bills were paid out of General Revenue. She explained it depended on how the numbers worked out.

The Revolving Fund builds up for various reasons according to Bryant. Last year an employee left in February and was not replaced until June. There was an \$18,715 carryover from the previous general revenue appropriation. Printing and postage were budgeted out of the carryover money rather than the Revolving Fund. In FY-05 there was \$15,000 in the Revolving Fund, and at the beginning in FY-10 there would be \$110,000.

Bryant continued that she was conservative in estimating income to the Revolving Fund. In FY-09 she estimated \$75,000; it received over \$80,000. She explained that in the last few years in the Budget Request,

she had been asked to address the Commission's plan for retiring baby boomers. When an employee left, the Commission would be required to pay accumulated annual leave by the middle of the next month. So, the agency needed to set aside money in the Revolving Fund in that event.

Bryant reported there were four employees eligible to retire in the next few years. When an employee leaves, they would not be on the next month's payroll, therefore, at least a month of their annual leave would build up, and the Revolving Fund would continue to increase. If the employee was not replaced for three to five months, the money would build back up. However, the money retained in the Revolving Fund would be there to continue to make payroll.

Pettigrew questioned whether the excess money in the Revolving Fund could have been used to give merit pay raises. Hughes explained that money for merit increases must be available every year; therefore, it must come from a steady source of appropriated money. She emphasized that most of the Revolving Fund was required for operations. Any excess was due to several factors, the main one being a delay in replacing an employee.

No action on the item was necessary.

Administrative report

The next item was the administrative report. Pettigrew thanked and complemented Hughes for meeting with the McAlester Ethics Committee. Hughes acknowledged Pettigrew's contribution to the meeting, as well.

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 Chair called for advice from the General Counsel on the lawfulness of the proposed executive session. Adams stated the items set forth at this place on 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 this claim or conduct a pending investigation, discuss litigation or proceed in the public interest. It was therefore her advice that the Commission go into executive session for the limited purpose of the listed matters.

McKinney moved to go into closed 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 invited to return to the room. Loy moved to go back into open session. Pettigrew seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously.

Public hearing, discussion and action on Rule Amendment #5

The Chair called for comments or action on proposed Rule Amendment #5. McKinney agreed to sponsor the amendment and moved for its adoption. Loy seconded the motion. Roll was called for purposes of the vote, and the motion passed unanimously.

Discussion on whether to adopt resolution on whether to enforce existing rules if amended by proposed Rule Amendment #5

The Chair announced the next item on the agenda was a proposed resolution. Hughes read the resolution as follows:

WHEREAS, the Ethics Commission has studied developments in the law regarding first amendment rights, open records and open meetings; and

WHEREAS, the existing Rules were written in the 1990's; and

WHEREAS, amendments to the Constitutional Ethics Rules [Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp. 2009, Ch 62, App.], at Sections 257:1-1-5©, 257:30-1-3(f) and (g) and 257:30-1-6 have been promulgated bringing these Rules more closely into compliance with current law;

NOW, THEREFORE, the Commission hereby adopts this Resolution and expresses its intent not to enforce the current language of the Sections of the Rules cited above until the Legislature has the opportunity during the 2010 legislative session to Review this promulgated amendment.

McKinney moved adoption of the resolution. Pettigrew seconded the motion. There was no further discussion. Roll was called for purposes of the vote, and the motion passed unanimously.

