

**PROPOSED DRAFT/NOT APPROVED: SUBJECT TO REVISION**

MINUTES OF REGULAR MEETING  
Of The  
ETHICS COMMISSION  
STATE OF OKLAHOMA  
Held  
MAY 21, 2008

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 Wednesday, May 21, 2008, at 10:00 o'clock a.m. Chairman Don Bingham ["Bingham"] presided over the meeting which was held in Room 511A 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: Bingham, John Raley ["Raley"] and Jo Pettigrew ["Pettigrew"]. Absent was Commissioner James Loy. A quorum of the four presently serving 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, Principal Assistant and R. Darey Roberts, Investigator. Observing all or part of the meeting were: Representative Mike Reynolds; Cheryl Purvis, Senate staff; Amy Alden and Rick Farmer, House of Representatives staff; H.J. Reed, lobbyist; Debbie Beaver, Williams Companies; Lee Slater, attorney; Ken Fagins; Scott Cooper and Mark Hancock, Oklahoma Gazette; Bryan Smith, *E Capitol*; Jason Doyle, *OETA*; Peter Rudy, *KTOK Radio*; and Michael McNutt, *Daily Oklahoman*.

Resolution Honoring  
Former Commissioner  
Bernice Shedrick

The next item on the agenda was consideration of a Resolution recognizing service to the Commission of former Commissioner Bernice Shedrick. The Chairman said, "We have lost one of our valuable members, former State Senator Bernice Shedrick, who resigned for very valid personal and professional reasons that all of us have to struggle with every day. We were so fortunate to have her for as long as we had her.

And, when I say ‘we,’ I don’t just mean the Commission and staff. I mean the State of Oklahoma.”

The Chairman noted that before the Commission is a proposed draft of a Resolution. He then read the document aloud:

WHEREAS, the ETHICS COMMISSION of the STATE OF OKLAHOMA came into being by passage of a citizen’s initiative put to a vote of the people September 18, 1990; and

WHEREAS, *Bernice Shedrick* was appointed by former President Pro Tempore of the Oklahoma State Senate, Cal Hobson, to serve on the constitutional Ethics Commission on December 9, 2004 and continued to serve through April 14, 2008; and

WHEREAS, *Bernice Shedrick* added considerable intelligence, quickness of mind and powers of persuasion to the Commission, where she represented the viewpoint of a former elective officer; and

WHEREAS, *Bernice Shedrick* was a vocal advocate for public disclosure of campaign financing and personal financial disclosure as the foremost method to avoid conflicts of interest;

NOW, THEREFORE, in recognition of the significant public service performed by

***Bernice Shedrick***

WE, the members of the ETHICS COMMISSION of the STATE OF OKLAHOMA, join in this resolution to express our sincere appreciation.

Dated this 21<sup>st</sup> day of May, 2008.

By: Don Bingham, Chair

Attest: Marilyn Hughes, Executive Director

Vice Chairman Raley

Vice Chairman Raley was recognized. “Mr. Chairman, I would like the honor of offering a motion that this body adopt this Resolution. I have known and admired Senator Shedrick for many, many years. She has performed admirably as a member of this Commission. We have lost a very valued member. Her intellect,” he said, “her sense of humor, her manner of delivering her opinion – even though they were sometimes

diverse from mine – shall be missed greatly. And so ,I take pleasure in moving the adoption of this resolution. Pettigrew seconded the motion.

Commissioner Pettigrew

She said, “I would just like to add that I’ve also known Senator Shedrick for some time. And, I commend her ability to see an entire situation from all points of view, and be able to think things through logically, and come to outstanding positions and decisions. She will be sorely missed and we, of course, as a Commission, wish her well.”

Chairman Bingham

The Chairman added, “I appreciate Bernice Shedrick in so many ways. I would like to list one or two. One, because she was an elected official, a member of the Oklahoma State Senate, she brought to the table her experience as an individual who had lived under the Commission’s ethics rules. She had to comply with those rules while she was in office with the State Senate. And, she dealt with constituents, with lobbyists, with the Ethics Commission. She dealt with so many of the components that those of us on the Commission who haven’t held elective office, never experience. She brought that insight. And, believe me, it was all valuable.

“Secondly – and there is no way to publicly talk about this because, by law, we can’t get into particulars – but, I can state publicly that Bernice Shedrick, although she happened to be of one party in Oklahoma and was elected and re-elected under that party, when she served on this Commission, she was absolutely non-partisan. If someone questions the ability of a person, who has run for and held public office and been opposed by a different party, whether or not they can set that aside and be non-partisan, then Bernice Shedrick is a shining example. She was truly non-partisan in her approach to every single issue, every single investigation.

I just can’t say enough about how impressed I was by her ability to see issues just as an Oklahoma citizen and as a Commissioner and not as a person who, for a considerable amount of time, was involved in partisan electoral politics. She is one of the very best. We will miss her.

Action followed as the Chairman then called for the vote. Roll was called. The motion passed unanimously.

The Chairman said, "I will sign the Resolution and ask Director Hughes to attest by her signature. We will then publish this Resolution and send a copy to Commissioner Shedrick.

Public Comment On,  
Or Request For,  
Constitution- al Rule  
Amendments

Next was 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. 2007, Ch. 62, App., and/or adopting resolution(s) to request legislative action with respect to items listed in the published document titled: *Rules of the Ethics Commission, Proposed Amendments and/or Drafts for 2009 Legislative Session for consideration at the May 21, 2008 Regular Meeting of the Ethics Commission*, incorporated by reference in this agenda as fully set forth in the document.

The Chairman explained that agenda item #5 is a standard feature of the Commission's regular meeting s. It provides for the opportunity to give us comment, remarks, opinion, input, feedback. "We want to hear from folks who are interested in the rules, any proposed amendments or from those who want to make proposals for the 2009 Legislative Session – on either new or amended ethics rules – to be promulgated by this Commission and submitted to the Legislature for approval. So," he said, "if anyone would like to participate by giving us their thoughts and asking us questions, now is the time."

Representative  
Mike Reynolds

Representative Mike Reynolds ["Reynolds"] was recognized. "Mr. Chairman," he said, "I just wanted to say that with two and a half days left of the Legislative Session, I hope the Ethics Commission has not given up on the idea of additional funding. When we were told this morning that almost a \$500,000,000 bond issue can spring up out of no where and we find money for that, I think it just points out that it would be very easy for the Legislature to come up with an additional \$150,000 for this body.

"Session won't be over until 5:00 p.m. Friday. And, I would encourage you Commission members to do whatever you can to see that your agency is funded properly, constitutionally. I expect, from what I've heard, the bond issue will not even be submitted to a vote of the people, which is required by our Oklahoma Constitution. So, I would encourage you to fight the good fight and seek that additional funding, because I know that will allow you to operate much better and efficiently. With

that, I would answer questions. Otherwise, I will return to the floor where we are casting votes.

The Chairman said, “We thank you for your support. And, we know you are needed to do what the folks elected you to do. Thank you very much.” Reynolds then left the meeting room.

The Chairman asked if there were any other public comments, questions concerning either rules under consideration, or creation of new rules or amendments to existing ethics rules that this Commission submits to the Legislature. There were none.

The Chairman said, “We want to continue to ask folks to attend our meetings and to follow our agendas and to communicate with us. You welcome and encouraged to speak out orally at these meetings. But, we also encourage you to provide us written submissions. They not only going to be read by each and every Commissioner, but by staff and by our legal counsel. We consider those very valuable.”

#### Approval Of Minutes

Next was consideration of whether to adopt the minutes [both open and closed sessions] of the regular meeting held April 18, 2008. The Chairman called for corrections or amendments to the proposed minutes.

Counsel was recognized. “Mr. Chairman,” she said, “over the coursed of years, our staff has made a concerted effort to be accurate in our work, both in terms of content and how it is typed and ‘proofed.’ During that time, we were able to call upon the services of the best proof-reader in the agency, Patti Bryant. But, Patti is so overworked now, she can no longer perform that task. Because of that, these 32 page minutes contain two topographical errors. We are grateful to Commissioner Pettigrew for calling them to our attention. Actually, I’m afraid we are going to have to enlist Commissioner Pettigrew as our proof-reader, because we certainly want to be precise in all of our written product.

“The two corrections are as follows: on page 22, at the end of paragraph #2, the word “trail” should be “trial.” In other words, two letters were interchanged there.

“On page 16, second paragraph, sixth line, “emerged” should have been “immersed.” Staff will correct those on the final draft. So, we would like to submit the proposed draft, subject to these corrections.”

Action followed, as the Chairman called for a motion that both the open and closed sessions of these minutes be approved. Pettigrew moved the adoption of the minutes, as corrected. Raley seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously.

Ratification Of  
Expenditures

The Chairman then called for consideration of agency expenditures for a period beginning April 1, 2008 through and including April 30, 2008. He called for discussion on the agency expenditures. There was none.

Action followed, as Raley moved the expenditures be ratified. Pettigrew seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously.

Consideration And  
Discussion On The  
Sufficiency Of The  
Commission's FY-  
2008 Appropriation  
And Its Potential FY-  
2009 Appropriation

The next item was consideration of and discussion on the sufficiency of the Commission's FY-2008 appropriation and potential FY-2009 appropriation. The question, the Chairman noted, was whether either or both meet the agency's constitutional mandate for "sufficient" funding under Article 29, Section 2(A) of the Oklahoma Constitution.

The Chairman stated, "This has been the subject of considerable discussion, both in the public forums and in this forum. I think it is worthwhile to consider continuing our discussion on that.

"We are coming up on a tough season for our staff. It's always tough, but I have to say this is one of the toughest – if not *the* toughest – times for the people who work for the Commission. They are really trying to do what the Commissioners have asked of them – what the law requires – and then some. But, they really go beyond that and are really service-oriented.

"I don't know I need to make any more comments at this time, other than what I've already given on that subject. So, I'll be happy to call upon my colleagues on the Commission to see what they have to say.

"But, I will add that I do not think that the proposed appropriation is sufficient funding. I think the announced appropriation – if it passes – falls short of that and violates the Oklahoma constitutional requirement that we receive 'sufficient' funding. We can have a fair and healthy

debate about what sufficient funding is, but the proposed appropriation doesn't even come close. We can't even begin to debate that.

"I want to emphasize again that this entity is a constitutional body. We are often referred to as a 'state agency.' And, in some loose generalized sense, we are an 'agent' and we certainly belong to the State of Oklahoma. But, we were created by a vote of the people amending the Oklahoma Constitution. And, the people – not a staffer and not an appointed member – the people of Oklahoma said that the Legislature *shall* provide sufficient funding to this particular body.

"I'm not willing to do nothing, because I am convinced that the constitutional requirement is not being met. I feel I have an obligation to do something.

"I'm not sure what the best approach is. We have attempted to have a productive, responsible dialogue with the legislative leadership. So far – and again, the session isn't over – so far, that dialogue has produced little, if anything, of added value and, again, does not even begin to approach – does not come close to – the sufficient funding required by the Oklahoma Constitution.

"In fact, from the proposal I've seen – and, again, the session isn't over – someone or some individuals are proposing \$50,000 be allocated for software that the Commission does not want, that the Commission does not need, and that is going to cost the Commission – and the taxpayers – more money.

"I will stand by my statement in any forum and I'll be glad to debate it with anyone. I invite anyone who thinks that this particular appropriation is a good idea to speak up now, or to attend our next meeting – or any meeting – and tell us why it is a good idea to have this \$50,000 earmarked for software put into our budget.

"That's all I'm going to say right now. I invite my fellow Commissioners to make comments.

Vice Chairman Raley

Vice Chairman Raley was recognized. "I would simply echo what you have already said, Mr. Chairman. I am in full agreement with your statement.

“I am gratified,” Raley said, “to see a number of people here at our meeting, members of the media and some other folks and friends. He repeated the invitation that the Chairman just issued. “If there is anyone here who can enlighten us and provide guidance specifically on the \$50,000 or \$150,000 appropriation – however we want to term it – we covet your opinion and your advice. So, if there is anyone here that would like to speak up, you are most welcome to do so.

“Mr. Chairman,” Raley continued, “I agree wholeheartedly with what you said about the inadequacy. I don’t think there is any point in debating it. I think everyone in this building – including members of the Legislature – if they were required to answer sincerely will candidly admit that we have inadequate funding. The media has offered us a number of stories, editorials and cartoons. Sometimes a picture is worth several thousands of words. So, everyone in this building – from the Governor down to the contract workers who sweep the floors – knows we are inadequately funded. That’s no longer debatable, except perhaps in some judicial venue.

“What we are faced with today is to look at options that we have that are available to us to remedy that situation. And, Mr. Chairman, quite frankly, as of this moment, I would say that our options are very few.

“The media has reported several times that this body has contemplated the filing of a lawsuit against the Legislature to require adequate funding. That was one of several options. Another option you have alluded to and that we try to cooperate and negotiate and to reason with members of the State Legislature – both Houses. We’ve done that, repeatedly. We have gone to the leadership of both Houses and tried to use the biblical phrase “reason together,” with little apparent success at this point.

“The money, I believe, is there. And, I think the Legislature has revealed its hand by offering \$50,000, as you’ve already alluded to, for software that is not wanted and which we repeatedly have told not only the public, but members of the Legislature, over a span of several months, repeatedly told we don’t want it, we don’t need it, and we will not use it.

“I’ve heard in the press some questions. And, it has certainly been debated in the House, and perhaps the Senate, as to whether or not

the \$50,000 is even adequate to fund this unnecessary software. I've heard stories that it may require \$150,000 or even \$750,000, just to start, with maybe another \$250,000 later on.

“From my personal point of view, Mr. Chairman, I'm not really concerned whether it costs a million dollars or 15 cents. It may be relevant. But, it is not material, because we're not going to install it anyway. There is a constitutional provision in the Oklahoma, as well as the national, Constitution that provides for separation of powers. I'm constrained to believe that legally and constitutionally, the Legislature has no authority to force us to accept software that we don't want, don't need and which would be an impediment to that which we have in place.

“Quite frankly, Mr. Chairman, if an attempt should be made along that line, I offer for consideration of this Commission the filing for an injunction prohibiting such an installation. So from my own personal point of view, Mr. Chairman, that's no longer an issue.

“The reason I bring it up is that the Legislature obviously has money at its disposal, if it is willing to contribute several thousands of dollars for the installation of this apparatus. I think it is significant, Mr. Chairman, that the Legislature is willing to contribute \$50,000 – maybe \$150,000, depending on the announcement in the press in the recent days – but they are unwilling to contribute that same amount to hire another investigator or to raise the salaries of our overworked and shamefully underpaid staff. But they are willing to spend money on a computer software that we don't want.

“We are crowded. We have little space to work. But, in recent months – after the move of the Attorney General to other quarters – some very valuable square footage in this building was designated, set aside and dedicated as an art museum. The same space, which we had asked for, or at least a portion of – some months ago and was denied us. No matter how culturally advantageous it may be to have an art museum, we are less than 200 yards away from one of the finest state-of-the-art museums and galleries in this nation. Yet, we dedicate a significant portion of real estate for another art gallery, while the Commission is still in a broom closet in the basement.

“Again, I think that shows where we are on the agenda and the priority that has been assigned to the Ethics Commission. Consequently, Mr. Chairman, I think it's time for us to seriously consider the last of our

options. Frankly, from a personal standpoint, I am most reluctant to even suggest that we do so. But, it looks like we are down to the point where we have very little choice to do otherwise. So, I invite my brother and sister commissioners to join with me in discussion as to whether or not we should take this last resort and employ this last available option that is ours.

C o m m i s s i o n e r  
Pettigrew

Pettigrew was recognized. "I am particularly bothered by the fact that, in our appropriation, we are still limited to seven FTEs for the Ethics Commission, when our workload has increased significantly. Staff has a lot of information on that, as to how many more candidates we have filing for office and how many more people have to be tracked.

"You can tell by newspaper articles that there are still lots of issues being brought before the Ethics Commission for consideration. Yet, we have only one investigator. I would wish we could perhaps change at least the FTE to eight, so that we could get at least one more investigator on our staff to do what we need to do. That is what we think of as one of the primary functions of the Commission.

"I would also say, because I've had a lot of experience with the Legislature and experience in law suits being filed, that I am extremely reluctant to be a part of the filing a law suit. But, sometimes when your options become so limited, you have to at least consider the possibility. I think that's what we are here talking about today. We have got to leave the window open for the possibility that if we cannot get adequate funding and adequate FTEs, that may be somewhere down the road."

Chairman Bingham

The Chairman said, "I would like to state a few facts that – I would venture to say – everybody in this room will ask themselves 'why Don Bingham is saying these things. We already know these things.' But, I will say them because there are folks here who are going to report to citizens and the general public, who might not know these things.

"First of all, our Commissioners serve without compensation. This is not a situation where the head of a state board is saying, 'I need a pay raise.' We're not compensated. We knew that when we accepted our appointments. So, we're not proposing that commissioners be compensated and this has nothing to do with compensating members of the Commission.

“Secondly, we’re not even asking as commissioners, I’ll speak for myself, that we have individual offices as commissioners to have an office in the Capitol. We don’t need an office in a state building. But our staff – the people in the trenches who really do the work at the Commission, who make it work everyday and provide the information that the public and the media and candidates want and who conduct the investigations – need more and better office space.

“We’re not asking for funding to build our own building. We don’t want a Taj Mahal. We don’t even want a modest separate building. We need adequate office space.

“We just need funding to do the daily operations by our staff. They have gone for years without anything other than cost of living increases. I wish I could tell you how lucky, how fortunate we really are to have, for example, the people, Marilyn Hughes, Rebecca Adams, Darey Roberts and Patti Bryant who sit at this table.

“It was asked in an article, recently, ‘when you say your funding is insufficient, what is it that you are not doing that you would do if you had more money?’ First of all, that question is misdirected because it shows no consideration for the people who do the real work. It’s not the Commissioners who do it. I think we do some important things. We make an important contribution and we cast the votes. But, the real work and the day-to-day work is done by the folks that are here. So that kind of question shows no regard, no consideration for them.

“But secondly, we’re at a little bit of a disadvantage here. In fact, it’s a considerable disadvantage. We’re forbidden by law from telling the public about our investigations, unless they become public matters at certain stages. And we can’t tell you what we do in closed sessions, because it is the law that we not tell you. And, I agree with that. It’s important to protect the privacy of the individuals who are accused of violating the Ethics Rules. They are presumed innocent

“I can say that some investigations result in us pursuing disciplinary action for rule violations. But many investigations result in a finding that there is no validity to an accusation. Some investigations are not pursued because we don’t have the resources. That’s all I can say because that’s all the law allows me to say. So I can’t give you particulars. I can’t answer the question.

“But, again, I would like to emphasize – and I speak for myself only on this – an appropriation with or without this useless, frivolous earmark for this unnecessary and counterproductive software – even if you put that aside, it’s so far from what the Ethics Commission of Oklahoma needs. And it will continue to need long after we’re gone.

“Senator Shedrick left. My term is up next year. These folks will eventually complete their terms. Mr. Raley was reappointed. But, you know, the Commissioners come and go. But, the Constitution stays in place. The constitutional mandate stays here.

“Our staff, unfortunately, at some point will leave us. And they’ve got to be replaced. I probably won’t be here when they leave the Commission. And, I’m going to be glad that I’m not going to be here, because I don’t know how you go about finding the kind of dedication that these folks show every single day. They don’t get their names in the paper. And, they don’t get a lot of attention. But, we know what they are doing.

“If you are a candidate or a citizen who wants some information about who is contributing to whom, and how much and who is being funded, and who is not getting money, these are the folks that will tell you. And, if you want to find out who is violating the ethical rules of Oklahoma government, Darey Roberts is the one who is going to be investigating it. That’s about all we can say. We’re not allowed to go further.

“Our needs are real. They don’t have anything to do with the individuals who happen to be commissioners from time to time. They are the ongoing institutional needs of the Ethics Commission. We are trying to avoid litigation. We’re trying *hard* to avoid filing litigation.

Vice Chairman Raley

“Mr. Chairman,” Raley said, “this is a public hearing. Should we ask if anyone has any comment, now that the Commissioners have made their statements?. I just wonder if anybody here has any comment or criticism or any sort of suggestion as to how we can avoid this action.”

Chairman Bingham

“This is going to continue to be a matter of public concern,” the Chairman said, “but if there is any motion that a Commissioner wants to make, I guess now is the time to make it.”

Vice Chairman Raley

Raley was recognized. “Mr. Chairman,” he said, “it is with great

reluctance that I offer the following motion and in doing so, I invite any suggestion or deletion or addition or modification from my fellow commissioners of what I am about to move. But, the substance and sense of this motion is that the staff of the Ethics Commission be directed by the Commission to commence preparation for suit against the State Legislature and the appropriate officials seeking judgment in the appropriate judicial venue and forum, requiring adequate funding of the Ethics Commission, conditioned upon the possibility of favorable action to be taken by the Legislature during the current session, or in any special session that may be called. And, I invite any suggestion from my brother and sister commissioners to this motion.”

Commissioner Pettigrew

Pettigrew said, “Commissioner Raley, I do believe that, in your motion, you are clarifying that this is not a motion to file suit. But, this is a motion to direct our staff to assemble information in case such action does become necessary. Is that correct?”

Vice Chairman Raley

Raley answered, “That is correct. And, of course, as all of us know, the preparation of a law suit, particularly one of this magnitude, will require the accumulation of a great deal of data and information. We know that. But, the sense of the motion is to direct the staff to commence the assembling of this information, this data, to perform the research that is necessary to prepare a petition for filing at the appropriate time, if it becomes necessary.

“In other words, this is a conditional motion. The sense of it is to give to the Legislature an opportunity to come forward and do what we believe is the right, prudent and statesmanlike thing to do and adequately fund us as the Constitution requires them to do. So, we are saying to the Legislature, ‘you’ve got time, you’ve got opportunity and we know you have the money. We want you to do what’s right.’

“We are saying to the Legislature, ‘you’re not required by the Constitution to like us, but you are certainly required by the Constitution to adequately fund us. And, if you do not do that, then this is the action that we plan to take.’”

Commissioner Pettigrew

Pettigrew said, “I don’t know if I have the exact words of your motion, but I do hope that in that motion we have the words ‘in case this action does become necessary.’”

Vice Chairman Raley

Raley answered, “I am willing to accept that wordage.”

Director Hughes

“It is conditioned,” the Director said, “on the possibility of favorable action by the Legislature in the current or special session.”

Commissioner Pettigrew

“Do we have to limit it to current and special session?” Pettigrew asked. “Can we leave it a little more open according to what else might happen in the meantime?”

Vice Chairman Raley

Raley responded, “Well, perhaps so. I don’t know. It would require action during the current session, which we know they plan to end some time Friday – or, any called special session. Obviously, we cannot go out and file a petition next Monday morning. It’s going to take an enormous amount of work by this staff to assemble the material necessary for a case of this magnitude. So, that gives the Legislature adequate time to consider and come back. We’re placing the ball in the Legislature’s court, so to speak, giving them an opportunity to do what we believe is the right thing.”

Commissioner Pettigrew

Pettigrew said, “I understand that. I just really prefer not to have any kind of time frame set around the Commission.”

Vice Chairman Raley

Raley replied, “Jo, I’ve practiced law for almost 50 years. Something of this nature is going to require a lot of time to prepare anyway. I mean this is not going to happen next Monday morning. We know that.

“The Legislature will know about this – I’m sure with the media present – they’ll know about this within the hour, or certainly by the end of this day what our intentions are. So, they’ll have plenty of time to consider it before we actually go down to the Courthouse and file a petition. They’ll have plenty of time.”

Chairman Bingham

The Chairman interjected, “I would just say this, Commissioner Pettigrew, to me, the motion – I take it to mean subject to really any future event that would cause us to suspend or terminate these preparations. And that’s all this is, is just some preparations.”

Commissioner Pettigrew

Pettigrew answered, “I can accept that, subject to some future event. I just didn’t like the idea that if there is not a special session, we’re definitely going to go into a law suit thereafter. I like the way you worded it. I don’t know if we can get it any clearer in the motion. I think we are all looking for the same thing – just getting the right wording.”



it's not over personal or individual issues, these are institutional and constitutional concerns. But, I'm concerned that kind of law suit might hurt Oklahoma. That's why I am a little reluctant.

"I was born and raised in Oklahoma. I've lived here all my life, except for a college. Some of you might not be old enough to remember this, but you know we've had our share of problems that really hurt Oklahoma in the eyes of the nation.

"In the 1960's, we had a Justice of the Oklahoma Supreme Court, a gentleman named N.S. Corn, who finally made the statement – and I'm going to paraphrase him here, but I'm pretty close. This is a Justice of the Oklahoma Supreme Court who said, 'In my many years on the bench, I cannot remember a year in which I did *not* take a bribe.'

"We had county commissioners – chief executive officers of our counties – I don't even remember how many of them were convicted of felonies.

"The Governor of our State, the Chief Executive Officer, David Hall, is a convicted felon.

"Oklahoma doesn't need any more bad publicity. And, I don't want us to be part of hurting this state. I just don't know what else to do. We're going to continue to try to talk to the decision makers.

"I saw recently where the Chief Judge of the State of New York sued the State of New York on behalf of all the New York judges, because those judges hadn't had a raise in over a decade. It may be more than 15 years, if my memory serves.

"What a shame. First of all, what a shame that it couldn't be resolved between adults, who care about those issues and recognize what the judiciary of any state needs. But, what a shame for New York to have its judges suing its elected officials.

"And I'm going to try hard. And, I know that I speak not only for these commissioners, but for Commissioner Loy who could not be here today due to that serious health problem. We will continue today, tomorrow and next week to try to find a solution other than a law suit. But I'm in favor of this motion, because it says we need to start making preparation in case that's the only option we have left. "

Commissioner Pettigrew

Pettigrew was recognized. "I appreciate your comments, Mr. Chairman. I also will reiterate your concern that we would rather work positively, than as an adversary to elected officials. They are also our customers, they are the people who use our services. We would hope to keep as much of a positive relationship as at all possible. But," she said, "when it comes right down to it, this may be the only action that is left. And so, I concur with your comment."

Raley said Mr. Chairman, you voiced a concern that I share in that this would be a sad and quite frankly a shameful day in the State of Oklahoma when a state agency that is constitutionally mandated to monitor and enforce rules of ethics is required to even think about and begin preparations for a law suit against the State Legislature for adequate funding to perform those duties. You voiced also a concern that I share and you said some of us may be obliged to remember the events in the 1960s during the so called Supreme Court scandal. I am painfully aware of those days because as a young Assistant U.S. Attorney in Oklahoma City, I was on the trial team that prosecuted the man who bribed the Supreme Court all those years. And so I have a very, today, a very fresh recollection of the shame that descended upon the State of Oklahoma that I loved during those sad days. And so it is with great reluctance that I offer this motion and I appreciate the concern that Dr. Pettigrew has expressed. But I appreciate her seconding the motion and so I call for the question.

The Chairman said any other public comment. We've had our say. Roll was called for purposes of the vote and the motion passed unanimously.

Consideration Of The  
Commission Not  
Issuing Ethics  
Interpretations For  
Remainder Of Calendar  
Year 2008

The next item on the agenda was consideration of whether the Commission should exercise its discretion not to issue ethics interpretations for the remainder of calendar year 2008 in order to conserve the Commission's resources allowing the staff time to meet campaign reporting demands.

Raley said Mr. Chairman, I am the one who suggested that this be done. As we all know, we are entering a campaign period of time when our staff is going to be inundated with requests for interpretations and particularly with preparing candidates for their obligations to conform to rules of ethics. It's going to be a very difficult and time consuming time for our staff. And while we are in that period, I respectfully suggest that they not be required to expend their precious on preparing interpretations

of existing rules and defer that until a more convenient time. And so I am the one that has suggested that. And I ask my brother and sister to confer with my decision.

Pettigrew said as a clarification, our budget year goes until July 1, is that correct? Did you make that motion? Raley said I will put that in the form of a motion. Pettigrew said I do second that motion. The Chairman said for a clarification, John, is are we saying just for the remainder of 2008 only we would exercise our discretion not to issue ethics interpretations? Raley said yes sir. The Chairman said and of course we can change our minds before the end of 2008 at any time if we want to. Pettigrew said I believe it would be until July 1. Adams said no this is calendar year 2008. Pettigrew said oh, excuse me. That is what I was asking. Ok. Adams said calendar year. The Chairman said alright, it has been moved that the Commission should exercise our discretion not to issue ethics interpretations for the remainder of the calendar year 2008 so that we can conserve the Commission's resources and allow our staff the time meet campaign reporting demands which are imminent. They are here. Now is the time and it really takes lots of hours and intense work to get the job done at this time of year. Is there a second to that motion? Pettigrew said I second the motion. There was no further discussion. Roll was called for purposes of the vote and the motion passed unanimously.

#### Administrative Report

The next item on the agenda is the agency's administrative report. Hughes said she has nothing to add.

The Chairman then said let's take a ten minute break.

#### Consideration Of Requests For Ethics Interpretations

After the break, the next item on the agenda was consideration of Requests for Ethics Interpretations.

##### a. Hearing on Request for Ethics Interpretation EI-2008-002:

Following a minimum of 30 days' notice as required by the Rules, the Commission will accept both oral and written comments prior to or at the hearing to be held at the May 21, 2008 regular meeting. Staff comments and/or proposed drafts of this ethics interpretation were available on the agency's website at [www.ethics.ok.gov](http://www.ethics.ok.gov) and, in addition, were emailed with its agenda to all those n the agency emailing list at least five (5) days before the meeting. The following question has been asked:

*Is there any prohibition on making an in-kind campaign contribution to candidates for Oklahoma state office in the form of publicly traded common stock?*

The Chairman said today is an opportunity for anyone to submit comments or make oral comments or ask questions about our proposed approach to this question.

Lee Slater ["Slater"] was recognized and said Mr. Chairman, could we get a succinct summary of what the staff is proposing? The Chairman said that would help me. Adams was recognized and said Mr. Chairman, staff has answered this essentially as we have our last request for ethics interpretation as we have noted to the Commission. Staff has been receiving a number of questions that are in the nature of a policy change as opposed to an interpretation. Ethics interpretations are similar to Attorney General opinions. They are meant interpret existing law. Staff does not feel authorized to go beyond that and essentially, judicially legislate, if you will, through an ethics interpretation something that the Commission has never contemplated. Has never put out for public hearing and has no basis at all for deciding. Consequently, we have responded with a letter which is going to become a form letter for us subject to any revision the Commission would like to make in it and I'm going to read the first paragraph of it. The rest of it is sort of boiler plate explaining about going to our website. "The Ethics Commission met in regular meeting Wednesday, May 21, 2008. After considering your request for ethics interpretation, the Commissioners determined the question you posed requires a policy change, as opposed to an interpretation of an existing Rule. For that reason, they found your remedy was not to file the Petition For Ethics Interpretation, per Section 257:1-1-9, but a Petition for Rule Adoption, Amendment or Repeal, under Section 257:1-1-10, of the Constitutional Ethics Rules, 74 O.S. Supp. 2007, Ch. 62, App."

And as I say, the rest of it is "should you choose to pursue a rule change, you may download the petition" and it gives the agency website and that type of information.

The Chairman said is it your thought, Rebecca, then that this question, at least the way it's worded, the way it's proposed, is kind of asking us to approve this form of in-kind campaign contribution and that if we are going to do that, we need to address it in a rule. Adams said Mr. Chairman, this Commission has never considered anything remotely like

this. The Commission has never considered allowing in a contribution something that by its very nature will change value virtually, sometimes minute by minute in a publicly traded stock, if it is on the New York Stock Exchange, the NASDAQ or any of those. This Commission would need to have testimony, I believe, Mr. Chairman, to inform the Commission of things like that. Like how often during the day would publicly traded stock even change values. We would need to know whether that would be a means of defeating contribution limits. If someone were to...or whether that is actually even a problem. I can foresee, well let me tell you what the issue is, the question is, from a factual point of view. And we'd have to get testimony and hear from experts. From a factual point of view, over a period of time would the change in value of stock be negligible or could it be considerable? That we don't have testimony on and would need. What I can tell you as General Counsel of the Commission is that the Commission has always jealously guarded those contribution limits. The Commission has never permitted any kind of a scheme whereby, by giving any type of in-kind contribution or whatever it is anticipated to rise in value in such a way as to defeat the \$5,000 per campaign contribution or for a PAC, \$5,000 per year. And, as I say that, that I know that the Commission would do based on what the law reads and how the Commission has upheld that over a course of 17 years. But whether the rise and fall in value would actually be, as I say, negligible or significant, is a fact matter. Perhaps because it is a fact matter, would make the interpretation very difficult. But at a minimum, I would believe that the Commission would need some expert testimony on that and we don't have it. And it is not appropriate to put that type of a judgement call on staff via the vehicle of an ethics interpretation.

Hughes said we also have to consider the fact that limits are set by statute, not just by our Ethics Rules. They read exactly the same, but they are statutes and so the Commission issuing an ethics interpretation would be affecting the statutes also and it might violate the statutes unintentionally.

Slater said I'll be very brief. I guess I now understand what those appellate judges mean when they say they concur in the result. I agree with the result that the staff has reached if not the method by which they are getting there. I would just say that there is a closely related matter and I don't want to go off on a tangent, but there is an ethics interpretation, I believe, that allows candidates and presumably PACs to invest campaign funds in securities. And I would urge this Commission

at some point in the future to consider amending its rules to preclude that and to limit the kinds of investments that candidates and political action committees can make with their campaign funds. I know from my own personal knowledge of campaign accounts that have been reduced by investment when the securities went down. Just as there I'm sure are cases of campaign funds that have been increased by securities that have increased in value and they have the same kinds of policy considerations for post contribution changes in the value that you have for pre contribution changes in value.

Pettigrew said Mr. Chairman, may I ask him a question. What about real estate? Is that something that has or has not been given in-kind through contributions because it might have somewhat the same effect as stock? Slater said if it has, I have no knowledge of it. I would encourage this Commission just to adopt some kind of rule that precludes any kind of speculative investment of campaign funds. It's one thing, I don't have any problem and I don't think the contributors have any problem with candidates or PACs investing in guaranteed return certificates of deposit or something like that. That's apart from speculative.

Hughes said the ethics interpretation that Mr. Slater refers to said that you could invest campaign contributions in growth opportunities within the depository. You could not take it out so you certainly couldn't invest in real estate. You couldn't invest in stock, but you could buy a CD, a money market fund or mutual fund within the depository where the campaign account was held. But you can't take it out of the depository. Slater said some of those wind up being invested in speculative investments. Hughes said I understand that because a mutual fund and a growth opportunity...Pettigrew said good point.

The Chairman said we don't need to delay this. I agree with staff's approach that this is just not something that ought to be a staff decision and it's complicated. It's an interesting question because you also, I mean I don't know how the First Amendment fits in all of this about the right to contribute. But just as a practical matter, it presents some formidable problems because we have campaign limits. And I don't want to get us in a situation, quite honestly, where statute says one thing and our ethics rules permit or prohibit something that the Legislature has spoken clearly on. It's just, you know, if somebody wants to propose one or more new rules or amended rules on this, it's an interesting topic. But it's not something the staff ought to be trying to decide through an ethics interpretation.

Hughes said I would invite you to submit an amendment to a rule. Slater said I don't want to work that hard. Hughes said I will write it for you if you want to do that. Slater said I was just going to observe, Mr. Chairman, that speculative contributions work much better when the contributions are to university athletic programs than they do with political campaign. I noticed Mr. Pickens said his \$165,000,000 contribution has nearly doubled in value during the last few years.

The Chairman said thank you for your comments. Are there any other public comments or questions on our proposed response that we decline to issue an ethics interpretation on this particular question. Again, we invite folks who think it ought to be addressed by the Commission to propose a new rule or an amended rule that addresses all or part of this or something that is related to it. If you think that's a good idea.

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 that matters set forth at item 14 on the agenda are made confidential by law. It is the advice of your General Counsel that the Commission go into executive session at this time for the limited purpose of considering these matters.

Action followed, as the Chairman entertained a motion to go into closed session. Pettigrew so moved. Raley seconded the motion. Roll was called for the vote. The motion unanimously passed.

The Chairman 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. The Chairman called for a motion to go back into open session. Raley so moved. Pettigrew seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously.

