

PROPOSED DRAFT/NOT APPROVED: SUBJECT TO REVISION

MINUTES OF REGULAR MEETING
Of The
ETHICS COMMISSION
STATE OF OKLAHOMA
Held
AUGUST 22, 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 public hearing and regular meeting of the Ethics Commission of the State of Oklahoma ["Commission"] was called to order on Friday, August 22, 2008, at 10:00 o'clock a.m. Chairman Don Bingham ["Bingham"] 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: Bingham, Jim Loy ["Loy"], John Raley ["Raley"] and Jo Pettigrew ["Pettigrew"]. 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; Janice Gafford, Information Systems Applications Specialist; and R. Darey Roberts, Investigator. Observing all or part of the meeting were: Lynn Howell, David Glover, Dr. John Wood and Mark Burkett, Common Cause Oklahoma; Representative Mike Reynolds; Lee Slater, attorney; Michael McNutt, *Daily Oklahoman*; Jeff Packham, *Journal Record*; Shawn Ashley, *Capitol Network News*; Caroline Dennis, Senate staff; H.J. Reed, lobbyist; Mick Hinton, *Tulsa World*; Amy Alden, House staff; Ken Fagins, Department of Health; and Jennifer Monies.

Public Comment On
Or
Request For
Constitutional Rule
Amendments

Next was public a 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. 2008, 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 August 22, 2008 Regular Meeting of the Ethics Commission, incorporated by reference in this agenda as fully set forth in the document.

The Chairman said, “We have some that have been submitted and discussed but are still under consideration. Again, because we’re not right up against the date on which we have to submit proposed rules or rule changes to the Legislature, we invite anybody to submit new proposals — new rules or amended rules. It’s not too late. The ones that we have under consideration are not exclusive. No time deadline has passed. And, if you’ve got an idea for one, you can put it in writing or you can just call us and talk to us about it. We’ll help you frame it, and you can submit it to us for consideration.”

Lynn Howell [“Howell”] was recognized. He said, “I’d like to speak about the proposed lawsuit. I don’t know if this is the proper time to do that or not.”

The Chairman said, “I think it probably isn’t. And, I’m sorry. I think there is an item on here where that is appropriate and I will certainly call on you first.” Howell said, “Thank you.”

The Chairman said, “Is there any public discussion, comments, questions about any rules that we ought to change — any new rules that we ought to adopt that don’t exist or any comments on what we have discussed about the pending proposals at prior meetings?”

David Glover

David Glover [“Glover”] was recognized. Glover said, “I am with Common Cause also. This is just a basic quick overview. When reviewing SB 1577, it is a tax credit law, and I went to Incentive Review Committee, and they were talking about it. There are certain laws that are passed that have lots of secrecy and no one’s supposed to know what entities benefit and to what extent that benefit accrues. And, it would be very nice if maybe there was something that the Ethics Commission could do to sort of ensure that that type of law isn’t allowed to be passed. And, if it is, that Legislators don’t benefit from the secrecy.

The Chairman responded, “I’ve got to tell you, I’m just not familiar with that bill. I would certainly be willing to take a look at it. I have to make this clear — is that we don’t, unless there is some direct impact on existing rules or we think that there’s been a problem between some proposed legislation in our operation, something like that — we certain don’t lobby for or against any pending legislation or proposed

statutes. But, since I don't know what the content is, I really can't say any more than that. But, if somebody would give me a copy of it, I will take a look at it and see if it's an appropriate thing for the Commission to consider — or it might not be. But, I will sure take a look at it. What was the number of that bill?"

Glover said, "1577. It is the Capitol Formation Investment Act. And, what it does as you read through it, it just has lots of secrets. Basically, no one's supposed to know what entities are getting the tax credits, and you're not supposed to be allowed to know what the amount of the tax credits are. There are only three or four people who are supposed to know, and it just seems like openness and transparency would be best if that would be sort of looked at. Or the rationale explained — because for us in Common Cause, openness and transparency seem to be the best disinfectants. So, it's just something to look at and, in general, things like that."

The Chairman said, "It certainly sounds like an interesting public policy topic. I just don't know if it's within our jurisdiction to even comment on it or take any action. But, I will look at the bill and consider your comments and consider whether or not it's appropriate for us to even address it. But, thank you."

Jo Pettigrew

Pettigrew was recognized. She said, "I have been reviewing our rule book while I was looking for policies that will come up later in the agenda. I have not drafted this change in the rule, but I wanted to just run it past the Commission and get some language for it by the next meeting. I have found some — and probably not the only case, but one that was glaring to me — duplication in the Statutes about Commissioners, and I found those. If you have your book, look on page 11 and on page 21. The central function of the Commission is found there on page 11 which is in Title 74, Chapter 62 and then almost a duplicate on page 21. It seems to me, since we do try to have transparency and ease of following rules, that we should get these as concise as possible. I plan to put these together and at the same time ask that we eliminate on page 11 the second column, number 3. It has been out of date in my thinking since 1994. And again, if we can take that out and just streamline our rules a little bit more, that might be helpful to the people that we serve. So this is just a heads up."

The Chairman said thank you. As we've noted before, Commissioner Pettigrew has done something that has been lacking — I'll say lacking — on the part of the other commissioners. I think our

staff may have had some awareness of this, and it's just a function of prioritizing for them. But, I'll speak for myself here. Commissioner Pettigrew has identified some areas where either there is some duplication in the statutes and rules or there should be duplication and they are not consistent or, you know, and also how we organize the existing information and rules and statutes in a manner that is most intelligible for the public. Sometimes we have to look two or three different places and compare two or three different provisions. And, you know, we assume that people who want to find out will do that, but we also want to make it easier for people to look at the rules, the statutes that apply, or the Constitutional provisions if they are applicable, and kind of have them not only in one place, but to have them organized in a way that makes better sense. And, Commissioner Pettigrew has taken that on with our full support.

John Raley

Vice Chairman Raley was recognized. He said, "Mr. Chairman, I would like to commend Dr. Pettigrew on assuming this very arduous and daunting task. And, she is absolutely correct. There is some duplication, and I think in the fullness of time — and thanks to her labor and the staff — we will have a rule book that will be more easily interpreted.

"With reference to Rule Amendment #5, which appears for the first time on our agenda, I have sponsored this rule, and I would like to give a little background for it. This would permit solicitations for charitable or humanitarian events and causes. And, this is probably not the time to go into the merits because we have plenty of time to discuss it later. But, an event occurred a couple of weeks ago that brought this to a head. Mrs. Hughes called me and told me about the circumstance involving the young daughter of a state employee who had a life threatening situation. And, the idea that was proposed was that she be flown to some hospital outside of the state that could provide her with the necessary treatment. And, the question that was put to Mrs. Hughes — and she and I discussed it — was whether or not the ethical rule would prohibit this type of event. My response, and certainly Mrs. Hughes agreed with me, was that when a child's life or well being is at stake, put the child on an airplane regardless of whose it is and take her wherever she needs to go, and we'll sort out the ethics later on. And, I think all of us would agree that that's the way we need to do these things.

"So, I asked Mrs. Hughes to assist me in drafting a rule which will encompass this sort of event and that is why Rule Amendment #5 appears on our agenda today. We'll have plenty of time to discuss it later on."

Jo Pettigrew

Pettigrew said, “Mr. Vice Chairman, I am still somewhat confused by the language, particularly on the item (ii), ‘for participation in a walk, run, or similar event as a fundraiser’ and then I really don’t understand the explanation. ‘The purpose of this amendment would be to allow solicitations for charitable organizations for victims of an accident, disease, disability or natural disaster or to participate in fundraisers for charitable organizations which conduct research to alleviate or assist such victims.’ I’m really kind of lost as to what it really means. Can you help me with that item (ii)?”

Raley said, “I want to make sure I’m looking at the same piece of paper that you are looking at. Are you looking at the amendment in its entirety or the explanation for the amendment?”

Pettigrew said, “Both. I didn’t understand either.”

Raley said, “Well, certainly, the wordage is subject to amendment, deletion, addition, whatever — and if you have a genuine concern about it, well that certainly should be addressed.

“Are you talking about Subparagraph (ii)?” Hughes asked.

Pettigrew said, “Yes.”

Hughes said, “Commissioner Raley, I think that what she is referring to is an exception for if someone wants to participate in say a Walk for Breast Cancer, and they go out and get several people to pledge so much per mile or how long they are going to walk or run or whatever they’re going to do, would they be prohibited from soliciting from anybody. And, we wanted to make an exception for that so that they could solicit from individuals who were wanting the money to eventually go to a charitable organization. But, the state officer or state employee actually does the soliciting because they are the one doing the running or the walking or the whatever in support of this disease.”

Pettigrew said, “OK. That helps, thank you.”

The Chairman said, “I need to look over the wording too, and we’ll all do our word smithing and try to embody the concept of what we want to do and not expand it so that it could be abused. And, I’m confident we can do that.”

The Chairman asked if there were other comments about any of the proposed rules or if anybody wanted to argue for a brand new rule or make any comments or ask questions.

Mike Reynolds

Representative Mike Reynolds [“Reynolds”] was recognized. He said, “Thank you, Mr. Chairman. And, I appreciate that we are always learning new things. I wouldn’t have had the opportunity to make nearly as much news if I’d paid more attention to the rules and knew about your six-month rule. And, I’m glad we’ve got that.

“But, I’m concerned about two or three things. One is, and I see you are addressing it, and I hope as the discussion goes along, it’s got to do with aggregates. And, I’m concerned about the manipulation of — and that might be too strong a word — but the use of the Ethics rules to establish multiple PACs which would allow individuals who are capable and have the personnel and the money to establish multiple PACs to effectively exceed contribution limits. A person could go out and set up ten different PACs and invite ten different friends to be the Chairmen of those PACs and give \$5,000 to each of those PACs and then that money could all be directed to one candidate. So that that person effectively gave \$50,000 to the candidate.

“I think we may have some examples of that over the last couple of election cycles, and we may see some more in this election cycle. I am certainly aware that nothing could be done this year with regard to that. I think the PAC to PAC prohibition has probably at least made that more obvious to the public if they would like to see if that’s going on. But, it hasn’t stopped it. And so, I hope as you work through I believe proposed number 3 on the aggregate limits, that some consideration be given there. Legislators, for example, if they are a member of a PAC, if they are a treasurer or an officer of that PAC, then money given to that PAC aggregates to their contribution limits.

“So, I’m not trying to confuse everybody right now. You guys probably understand what I’m talking about. But, I hope that some consideration might be given, I think that might be beneficial. When we are looking long term, it will become more apparent — as I say, as this election cycle unfolds.

“Another significant issue is we saw a rule passed that allowed you to transfer money from one campaign to another. But it occurs to me that I suppose if someone wanted to be within the limit of the rules and possibly avoid the spirit of them, they might establish a campaign for the

State House and collect money and then transfer it to a campaign for the State Senate in the same election cycle — collect money, transfer it to a campaign for Lieutenant Governor — collect money and transfer it to a campaign for Governor. And, they would have a huge advantage over someone that simply established a committee to run for Governor, let's say. And so, I think the Commission — and I would hope and try to get with Marilyn and visit with her about possibly a way to write it — should pass a rule that would prevent someone from receiving [in excess of] whatever limits you establish within an election cycle as opposed to for a particular office.

“The third issue is — I noticed that it's getting less and less — but I've noticed that quite a few people say “information requested”. And, it seems like it would be very difficult to establish if a person has exceeded an aggregate limit if they don't even know their address. And, I would suggest that, at the very least, I have examined a number of checks that I have received over the last election cycle, and I do not believe that I received one check that didn't have a person's address on it. So, I do not understand why we have “information requested”, and I would propose maybe something as simple as, if you don't have that information, you have to provide a copy of the check to the Ethics Commission or some simple things of that nature. I don't really know. I'm just throwing that out as possibilities.

“That might also clear up another aspect, and this will be my last point. The idea is that sometimes you receive a check — and it may be dated two or three months earlier so you are trying to get it in the right campaign cycle — but someone has already reported it. Let's say the PAC has reported that check three or four months ago. You didn't have the check. And so, possibly adopt a rule that says checks must be tendered within some certain time frame of the date they are written.

So, I've tossed out three or four, and I'd be happy to answer questions on any of them, and I will be getting with Marilyn to try to flesh some of this stuff out. But, I wanted to just mention that today.”

Pettigrew said, “On the concept, Representative Reynolds, giving to a PAC for it to go to an individual, I wanted to double check this with our Director, because we had this conversation a few days ago. I believe that's against the rules right now. If you give money to a PAC, you cannot direct it to go to an individual.”

Hughes said, “That is correct. It cannot be earmarked.

Reynolds said, “I don’t know what statement I made.

Pettigrew said, “... that you give money to a PAC and it goes to that individual.

Reynolds said, “Yes, I do know what I said when I was discussing the fact that a person could set up multiple PACs. That is quite true, but I do find that not being an attorney, the legal standard for insisting that it go to a certain person may not exist and so it becomes, ‘Gee I want you to set up this PAC, and I’m going to give you some money, and I have really got this friend over here that I like a whole lot.’ Particularly [this is true] when you see that many PACs have the same treasurer. Many PACs have the same email address, the same contact point. Maybe it was in the definition of the law of what directing a contribution is. It’s not as strong as it needs to be.”

Pettigrew said, “OK. Thank you.”

The Chairman said, “I will make this comment to Representative Reynolds and anybody else who is interested in seeing some changes or amendments or the creation of new rules. Of course, we don’t require — and we will consider and work on to the extent we are able to any proposals that you make to us whether it is just appearing and saying I think this is a good idea and ought to be done — so, we don’t require any written submissions. But, it will be helpful if — at least it’s helpful for me — you either, and I hesitate to say, go talk to the staff. Because, you know, they just have so much time. But, we appreciate actually your willingness to go to the staff. I’m just saying I wish they had more time to spend with you, and to the extent that — although it’s not required — anybody who proposes a rule or a rule change, to give us their written materials and their ideas. It doesn’t have to be, it’s not on a form, it doesn’t have to be in any formal language. You don’t have to draft the rule that you want. Just kind of tell us what’s on your mind — what some of your considerations are — what you’d like to see achieved.

I think that would get us started and just help us, and then we might have some follow up questions, and we might call you or if you’re in a public forum, we might say, ‘OK, we understand your point on this but what about that?’ So, again, if you talk to staff, they will try their best to find the time and they will appreciate your input. Again, if you can put some or all of it in writing, that would just be helpful. It’s not required.

Any other comments, questions or whatever about either proposed rule amendments that have been proposed and are pending or any new rules that ought to be made.

Approval Of Minutes

Next was consideration of whether to adopt the minutes [both open and closed sessions] of the regular meeting held July 11, 2008.

The Chairman called for corrections or amendments to the proposed minutes.

Loy said, "Mr. Chairman, on page 5 there is just a word that spell-check wouldn't catch, but about the 10th or 12th or 14th line down, it talks about "solicitations can only be made by mail to the 'residence' instead of 'residents'."

Hughes said, "Also, Commissioner Pettigrew turned in some [corrections] to us two on page 25. In the first full paragraph, 4th line from the bottom, it says 'and again if, add 'we', find that there is.' And, then in the first line of the next paragraph, it suddenly "donned" on me instead of 'dawned' on me. And, then on the next page in the next full paragraph it says the Chairman said Jim seconded the 'amended.' It should be 'amendment' after that. That's all."

Adams said, "I'd like to just add for the record that workload is such that I am no longer able to do the minutes, and our Principal Assistant types them up almost in transcript form. I think she does a remarkable job on that. These minutes are now running 41 pages without paragraphs dividing them. If they did, we'd be looking more like at 50-page minutes for meetings. It's beyond staff's capability to do it.

"So, we want to thank our members. Our members are now being called upon to be our proofreaders and to help us with our documents because staff load is such that we can no longer do that without their assistance. And I want to thank Commissioner Loy for his input and Commissioner Pettigrew who has been working with us on several of our documents for their assistance."

The Chairman said, "Thanks to both of you. These are, I mean, I've seen minutes of both private sector and public sector meetings, and these are virtual transcripts."

Bryant said, "I don't have time to go back and read them after I type them."

The Chairman said, “I think it is really an extraordinary effort to produce what you have, and I’m glad that the folks on the Commission are proofing. But, we appreciate the effort because I know that getting this out — I mean, if you’ve ever had someone try to transcribe even from a recording or from their notes — it’s just kind of a daunting task, and it’s a heck of a lot harder than it sounds, and we appreciate what you do.”

Pettigrew said, “Mr. Chairman, I want to apologize to Director Hughes. I think I missed giving these to you. But, you might want to change them. On page 29, the full paragraph which is on the second half of the page, about the seventh line. ‘The Legislature may control our purse strings, but the Commission despite’ — then take out the word the — being hampered by under funding’. The same thing on the next to the last line of that paragraph. ‘And, I think we should pause for just a moment and commend our staff for the magnificent job that they have done despite — and take out the — being hampered.’ And, that paragraph also states the way we feel that trying to get these minutes out under the circumstances has been really a challenge to you, and we appreciate it, and we’re glad to help when we can.”

Bryant said, “Thank you.”

The Chairman asked, “Are there any further comments on the minutes of our July 11 meeting?” There were none.

Loy moved the approval. Pettigrew seconded the motion. Roll was called for purposes of the vote and the motion passed unanimously.

Ratification Of Expenditures

The Chairman then called for consideration of agency expenditures for a period beginning July 1, 2008 through and including July 31, 2008. The Chairman called for discussion on the agency expenditures. Raley moved that they be adopted. Loy seconded the motion.

Pettigrew said, “I do have a question on this. I am wondering on our expenditures if we can get a little more information. And again, whatever I ask for, I have to think it’s just one more task. But, I would like to see a further breakdown on some of these expenditures. For instance, we have all the different areas of the office and salary expenditures per each. I would like to know what positions are charged off to each. That doesn’t mean we have to have the person’s name, but just who are we talking about as far as the position so that we get a little more specific?”

“I don’t know what longevity means and perhaps everyone else in the room does. But, I think maybe just a little sub-point might clarify that, and it would go on each report and it wouldn’t have to be repeated a lot. As far as supplies — as far as if they are not a large amount, which they don’t seem to be — I don’t know that it needs to be designated or delineated. But for large amounts, I would ask that they would be done so that we try to enhance our financial report, Mr. Chairman.”

The Chairman said, “I concur on your question about longevity. I think it lacks some clarity that we could give it. And, I’m sure it is simple to clarify things like that. Again, we’re not the only audience. Obviously, the public is, and so the public needs to know what exactly is that expenditure for and, to the extent that we can be more precise, I echo what Commissioner Pettigrew says. You know, every time we add to our list of here’s a new thing we want the staff to do, these are good ideas. We are mindful of your situation and the other challenges that you face every day. And, that’s a good point.”

Bryant said, “I have a question. Since I do the expenditures, I have a question. When you are talking about supplies, on the sheet where I am actually listing the monthly expenditures, I do list what each item is. When I purchase supplies, I do list it out what the item was on the report. There is a sheet that lists the expenditures. The other pages are just a summary of the budget for the year and how much we have spent to-date.

Pettigrew said, “You are correct. So, as far as supplies being designated, we do that.”

Bryant said, “Each expenditure is listed, but I can be more detailed in my explanation on that if you would like for me to be on everything.”

Pettigrew said, “I would say these abbreviations might could be extended, ‘Corp. Ex.’”

Bryant said, “That is a vendor, Corporate Express.”

Pettigrew responded, “We need to be more clear. I stand corrected on the items, but I still think some of the other things, maybe it can be done without a lot of extra work.

Bryant said, “I just wanted to be clear on what you want. Thank you.”

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

Consideration Of
Whether To Approve
The
Memorandum In
Support Of Additional
Funding For The
Ethics Commission

The next item on the agenda was consideration of whether to approve the memorandum in Support of Additional Funding for the Ethics Commission and meeting with legislative leaders prior to seeking supplemental funding through the Contingency Review Board.

John Raley

Raley was recognized. He said, “Mr. Chairman, I would like to offer a motion, and then if it is seconded, I would like to be recognized to speak for the motion. And, I offer a motion that the Memorandum that has been submitted for our consideration be adopted as an expression of the Ethics Commission on the funding situation that has been the subject of considerable debate over the last some months. I move that it be adopted and made part of the record of the Ethics Commission and that it be an expression of the Ethics Commission on this subject. And, that a copy of it be provided to the principal legislative and executive leaders of the State, as well as a copy to the media.”

Pettigrew seconded the motion.

The Chairman said, “I have a question, and I know what you mean. Would your motion include a copy to anybody who wants a copy in addition to the media — in other words, public dissemination?”

Raley answered, “Mr. Chairman, may I be permitted to speak in favor of the motion?”

The Chairman said, “Yes, let’s have some discussion on it. May I just prelude this by kind of explaining what this is? At a prior meeting we authorized staff — we did not vote to file a lawsuit — we voted to ask the staff to prepare that, in the event that we could not avoid litigation, to at least begin some preparations that might assist us if litigation were absolutely necessary, and we voted to approve it. No vote has been taken on that. And, this is a partial result of the staff’s acting at our request. But, rather than keeping this as some internal document or as some attorney/client privileged communication or work product — for those of you who are familiar with the work product of a legal document, that means that when some one is assisting the attorney, and they produce something for use by the attorney, it is privileged and confidential and no

one can discover it — rather than give it that kind of status, we felt — I felt, some of us felt — that it would be appropriate to simply put this out for public consumption. And, we hope that, and I believe, our legislative leaders will consider it. I believe that the public will find it very interesting. Now, that's kind of what this is. Now, Vice Chairman Raley, please."

Raley said, "Mr. Chairman, as all of us recall at our last meeting there was some discussion about our efforts to achieve some kind of reconciliation with the leaders of the legislative bodies to avoid the filing of a lawsuit. And, I think we were unanimous in our desire to do everything possible to take advantage of every option that was available to avoid litigation. At that meeting, we were honored with the presence of the Chairman of the House Appropriations Committee, Representative Ken Miller, who appeared in what I would term an act of political courage to come and speak to us on this subject. During his remarks, he indicated that, in his opinion, the Ethics Commission was adequately funded, and he felt that the Commission had not, to use his terminology, made its case with his committee or with the Senate committee.

"There was a great deal of discussion during that period of time, and I think that all of us agreed that, if we were required to make the case, we would certainly do everything in our power to do so. And so, you have correctly stated, Mr. Chairman, the staff was directed to prepare a brief which would be comprehensive, which would have the facts, data, statistics, that would be persuasive in achieving the goal that we were seeking. And, that is to avoid litigation and to persuade the Legislature that we were indeed underfunded, understaffed and crowded. The staff took on this arduous task. Our General Counsel, Ms. Adams, I think, was the principal author of this, although she was assisted by all of the members of the staff— Ms. Hughes, Patti, Darey, and, to a certain extent, members of the Commission. We have reviewed several drafts of this, and all of us, I think, have offered some additions and so forth.

"What has been produced, I think, is a very comprehensive document. And Mr. Chairman, I sincerely believe that any conscientious, fairminded person who will review this with an objective viewpoint cannot help but conclude that which we have suggested over the last several months — that for years this agency has been underfunded, that our staff has been brutally overworked, that we are trying to operate under extremely crowded conditions, and that our plea with the Legislature for adequate funding should be addressed by that body in an objective

fashion and a fair fashion. And, I believe that if they do, they will conclude with us that we need additional funding.

“So, for that reason I have offered this motion. It has been seconded, and I know that the Chair will welcome any debate or other comments on this very fine brief that has been produced by our staff.

Rebecca Adams

Adams was recognized and asked, “May I add something? I want to reiterate what Vice Chairman Raley has just said. Staff wants to acknowledge the input of the Commission with regard to the content of this Memorandum. The four sitting members — each one has weighed in on this document — have made suggestions and proposals and additions, all of which have been included. So, at this point, we do not consider this a staff product. This document bears the imprimatur of and the imprint of the four sitting Commissioners all of whom have spent time reviewing it, adding to it. And, it is now a Commission document, in fact, in the content. And, of course, it will be legally a Commission document if we have the vote today.”

The Chairman said, “That is a very helpful point to make. That is why I think it is appropriate that we vote to approve it — which is our statement in a motion because it reflects our thinking as Commissioners. It’s not just a staff document that we either rubber stamp or that staff produced this, and we just kind of want to float it out to the public for public consumption and some feedback. We are very interested in feedback, but this is a Commission document if we vote to approve it.

“We just want to acknowledge that, certainly, we couldn’t have gotten to this point or anywhere near it without the extraordinarily hard work since we directed you to do this. I didn’t know that you would even have it ready by now. And, as we went over it individually as Commissioners, I remember thinking, it just really amazed me that — I knew that you would follow our request and produce a quality product, and we had confidence in you. But, in terms of getting it done before September 1, I’m pleased about that because now that advances the process. Again, we put it out to the public for the public’s consideration. We send it to the Legislative leadership, Governor the Lieutenant Governor, the Attorney General. And, we continue our discussions which we still hope will be productive. That’s why we are doing this. And, now I guess this might be the most appropriate place — Lynn, since you mentioned lawsuit, we’ve got a motion pending and before we vote on it, please feel free to make some comments — and I’ll open it to anyone else who wants to comment.”

Lynn Howell

Lynn Howell [“Howell”] was recognized. Howell said, “I am Lynn Howell, Chair of Common Cause Oklahoma. We’ve got a number of our board members here as well today. And, I want to speak on the issue that has just been raised. We have not seen this Memorandum, of course, but I take it that it advocates or sets out the case for increased funding from the Legislature. And, we know that a lawsuit has been discussed — but also getting that funding by agreement, by cooperation with the Legislature, of course — that’s the best way. You never want to go to court if you don’t have to.

“On the other hand, there is a long, honorable tradition in this country of going to court to get your rights upheld, and that’s one of the things that makes this country great — the rule of law. Now from the point of view of Common Cause Oklahoma, our goal is to promote openness and honesty in government. Just like our board member David Glover mentioned a minute ago — openness and honesty. And, the Commission plays an essential role in ensuring that we have openness and honesty in our state government.

“As far as openness goes, we have the system set up where lobbyists are registered. Their contributions are limited. Campaign contributions are limited. You know Common Causes’s goal for a long time has been to limit the influence of money on government. Now we know that will never happen entirely. Money is always going to have an important role, but with the system that the Commission has set up, at least we can know most of the time where that money is coming from. And that’s a big step.

But, in addition to establishing these rules and this database where this information is available, those rules have to be enforced. And, I think that’s where the problem is. How many times have you seen an article in the paper talking about campaign contributions recently where they mentioned that candidate X hasn’t turned in his or her report yet, although the deadline has expired? So, we don’t know — that article didn’t know — who had given to candidate X’s campaign. How many times has that happened? Or, how many times do you go and discover that a report doesn’t have all of the information that is required to be on that report?

“These are minor infractions — just like speeding. It is certainly a minor traffic infraction, but it is important to enforce. If everybody speeds, the highways are chaos. If you just thought that you are only

going to get in trouble for a head-on collision, driving drunk, the highways would be chaos. The same way with our system here.

“The major investigations that the Commission needs to do are very important, but it’s also the small things that are important. These rules have to have some teeth. And, if people think that they can continually file late reports or incomplete reports, the system becomes worthless. But, the Commission right now doesn’t have the staff or the time to enforce these little things that are essential for openness and honesty in government. So, from Common Causes’s point of view, this funding that has been lacking for years is very important. We need it to make the system work properly. Thank you.”

Bingham

The Chairman asked, “Are there additional comments about — and I realize it is difficult because you haven’t seen the document yet — if this motion is approved, you will receive it this afternoon. Rebecca, could you address the process and mechanics if this is approved and how folks are able to get copies.

Adams

Adams said, “As members know, this document has been through numerous revisions and drafts. We thought we had a final, but we have two corrections to make today. It won’t take us long. They are both on the same page. After the meeting is over, if approved, staff will take this document downstairs. I will make those corrections. I will hand the brief over to Patti. As you know, the brief also contains multiple attachments. We’re going to have to do some major, taking some briefs apart and whatever and putting it back together in order to get all of these attachments to it with the brief. Patti will be in charge of that. And, it will take us a couple of hours probably to get the corrections and the copies and the deliveries done.

“You have told us where you want us to deliver them — leadership of the Legislature, the Governor, the Lieutenant Governor, the Attorney General, the press and the public at large. We’re going to have to run all over the building because you have asked us to hand deliver, which we will. So, I’m going to say the whole process is going to take a couple of hours — an hour and a half or two hours to get that done. We will have them in the office to those who are not on our hand deliver list. Anyone who wants to get one should come down about maybe two hours after the meeting, and we will have them there in the office.”

Hughes said, “We can also, if you like, put them on the internet — so, for those who don’t want to stay around for a copy.”

The Chairman said, “I would. This is, I don’t want to sound over dramatic, but this as important a document as I’ve seen ever come from this Commission. I’ve only been here four years. But, I’d like to see it posted on the internet.

Hughes said, “Just check our web page under recent news.”

Pettigrew

Pettigrew was recognized. She said, “Vice Chairman Raley, thank you for your comments. Well put. I just want to reiterate that this is something we asked of staff so that we would have our background information whether a lawsuit was needed or not. And, then Representative Ken Miller asked for this and we have complied. And, I think it is a very positive sign for the Commission to do this in response to that legislative request. And, I’m optimistic that we are going to have some good results from it.”

Bingham

The Chairman said, “My final thought is this. This document gives an historical perspective to the longstanding problems of this Commission. And so, I think it’s important to keep in mind that these problems clearly predate the current Legislature and its current leadership. These are longstanding, unmet needs and longstanding problems in accomplishing a mission that the Constitution imposes on us. And, there may have been some attempt in some quarters to make the lack of funding — and, certainly when I say some quarters, I don’t mean from this Commission or staff — but there may have been some attempt to turn this funding question into a partisan issue. And, that’s a misuse of this very important issue, because it goes far back into prior administrations, prior legislatures, and this is not a document where we attempt to do anything other than make our case. We’ve been asked to do that. I thought it was a fair request.

“Even if there were no lawsuit — if our legislative leaders ask us to make a case for additional funding, that’s what we ought to do. Litigation or no litigation — and I’m not saying that this will result in litigation — but, this is our attempt in a very serious and very careful way simply to present the facts that we have been alluding to in generalized terms. You’ve heard our comments, remarks about under-funding and problems and not being able to do what we feel our constitutional mandate is. But, this gets down to the underlying facts that have led us to make those public comments.”

Loy

Loy was recognized. He said, “First, I want to commend staff for the completeness and just general work product, if you will, regarding

this Memorandum in Support of Additional Funding. Our request for additional funding is based on the experience of this Commission and the needs of our Commission and its staff in providing a fair playing field for the elected officials in Oklahoma. We were not established by the legislature. We were established by the people. And, we are the people's commission. The additional funding requested is not meant to be an advantage or a disadvantage for any member of the Legislature or elected officials — just the opposite. We're trying to provide a fair playing field for all people who want to serve in this state. And, this additional funding request to me — as to any fair minded person — would say, 'Well, that's certainly what we ought to do.' It's not meant to be an advantage or disadvantage for any political party. It's a message to the Legislature from a Commission established by the people, and we are the people's commission, and I surely support this memorandum."

The Chairman said, "Thank you, Commissioner Loy. Are there any further comments or questions?"

Raley

Raley said, "Since this is my motion, let me sum up very briefly our collective thoughts. I appreciate the thoughtful comments by my fellow commissioners. In submitting — assuming that this is passed — in submitting this to the Legislature and the other leaders of the government, we are saying individually as well as collectively that we will not shrink from the task and the burden that we assumed when we took an oath. And, one burden that we assumed was adequate, proper funding to allow this Commission to operate under the constitutional mandate that's imposed upon it. We will not shrink from that. Having said that, however, we should send this message to the Legislature that this is a very sincere, honest, and, I believe, very honorable effort on our part to avoid any litigation.

"And, we ask for the Legislature to look upon this document, this effort, with equal sincerity and objectivity. And, we are comforted with the thought that if they do so, they will adopt it as part of their legislative policy and grant us adequate funding. Thank you, Mr. Chairman."

Bingham

The Chairman said one final thing. Staff, and my colleagues and I, have done our best to make this Memorandum as factually accurate as we can. But, I'm inviting everybody here, as you review this, if we didn't get something right, please tell us. Just say you got it wrong or you only got it half right or what you said is true but it's misleading or whatever. I mean, we invite your comments, criticisms. And, it's not a finished

product. Our staff has got us this report that we'll submit today, but we will be updating it with additional information as we go.

“But, we would welcome any constructive comments. And again, if we just made a mistake, please inform us and we'll do our best to correct it.”

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

The Chairman said, “So, this will be distributed this afternoon — be available to the public, to the press, to anybody who wants a copy. It just won't be available in the next hour or so.”

The Chairman announced a five minute break.

Consideration Of Items
To Include, Priority Of
Items And Total
Amount of Budget
Request For Fiscal Year
2010

Following the break, the Chairman said, “The next item on the agenda is consideration of items, to include priority of items, and total amount of budget request for fiscal year 2010. Are there any comments from the staff or questions from anyone?”

Hughes was recognized. She reported, “We have tendered you a list of six items that would be included in this year's budget request in addition to our current appropriation. And, we would invite any comments on that or changes or any thoughts by the Commission on what your priorities would be if they are different than how they are listed.

The Chairman said, “Would it be fair to say, or accurate to say, that the Memorandum that is going to be disseminated this afternoon provides information that would have a bearing on how we convey our needs for 2010?”

Hughes said, “We tried to consider that by adding another Administrative Assistant and a Legal Secretary in addition to what we had previously requested — the auditor/investigator, the attorney and the trainer. The needs that we came across in doing this Memorandum prompted those two additional people.”

The Chairman said, “You mentioned adding a legal secretary. Would that be adding another secretary to the staff?”

Hughes said, “We really don't have a secretary in the secretarial sense of the word. We have Patti who is our Principal Assistant — who

does everything under the sun including the repository function and serves as the liaison with just about every agency that requires us to do anything in the state. There are a few of us that help and are appointed to some things, but not many. And, then we have her assistant, Merlyn Rios, who is an administrative assistant, who is primarily responsible for entry into the new lobbying disclosure system. But, she is training under Patti to do a lot of the functions that Patti has done, so that we divide some of those, especially financial obligations, so that we don't get in trouble with the same person doing the deposits who did the whatever. And, then we have data people who are in charge of the electronic filing system, helping our filers do that kind of thing.

“We don't have any secretaries. A legal secretary would help us in a lawsuit to draft all of those documents — be of assistance to the attorneys. As Rebecca has so often said, we need someone who is familiar enough with court documents that you could call them up and say I need this motion or I need that entry of appearance or I need this, this and this, and so can you bring it to the courthouse and let's get it on file?”

The Chairman said, “I'll direct this to Rebecca, and then I'm just going to go on. If you are doing legal work that is going to lead to, for example, public discipline — maybe even a district court prosecution which are extremely rare — who does your typing?”

Adams said, “We do our own. Mr. Chairman, I'm a hunt and peck typist. I'm not a good typist. It takes me a long time to get a document done, but I do all of my own documents. I copy all of my own documents. I mail all of my own documents. And, I file all of my own documents. That really slows me down in the amount of output I can do as a lawyer because I have to be my own secretary at the same time. I don't think it is an efficient use of a professional's time to also have to do clerical work.”

The Chairman said, “This is one of several issues that are discussed in what we are going to distribute today.”

Adams said, “For instance, every word of this brief was typed by me personally. I believe two or three of the exhibits were typed by me personally. I will be making the corrections to the document today. I will not be copying them today. Patti will do that. But, otherwise, I would be copying them, and I'd be doing all of that. I am probably the only

General Counsel in the government this applies to, I would guess. We haven't talked to them all, but I would guess."

Hughes said, "As to when we would need to approve a budget, it's due by October 1. And, we have a situation where our Principal Assistant will be having surgery. She's almost in so much pain, it's hard for her to walk. And so, to wait until our next meeting on September 19, which is a little later to allow her a little more recovery time from the surgery, would not give time to prepare a budget request by October 1. So, even if it's preliminary and you change it later, we need to adopt some direction for the budget today."

The Chairman said, "So if we — and again, I'm expressing one person's opinion here — the way I look at it. I've found it acceptable. I'm not saying we couldn't with further discussion revise it, refine it and maybe re-prioritize, but certainly if we were to achieve this, that would have a meaningful and favorable impact on this Commission. And, these are certainly necessary items. So, just to clarify, are you asking that we formally approve this as our fiscal year 2010 budget request, but that we would have the ability to revise it later on if necessary?"

Hughes answered, "That is correct. Yes."

The Chairman said, "Is there a motion then that we approve as our fiscal year 2010 budget request what has been presented to us here by staff and submit it by the deadline with the understanding that we have the right and the ability to change it based on additional study and information?"

Loy said, "I make that motion, Mr. Chairman." Pettigrew seconded the motion.

The Chairman said, "We'll need to keep taking a look at this, but I understand the situation. We've got to submit it, and maybe we'll get some more public comment on it. Folks, take a look at this. This is our first pass at our 2010 fiscal year budget request. And, I'm sure there will be some changes, most likely. If you want to give us your comments on that, again, you are never required to put it in writing, but you can if you want to. Or, you can show up and tell us what you think of the budget request."

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

Report On Compilation
Of A Booklet Of All
Policies Pertaining To
The Commission And
Its Staff

The next item on the agenda was report on compilation of a booklet of all policies pertaining to the Commission and its staff.

The Chairman said, “I would like to call on Commissioner Pettigrew.”

Pettigrew said, “In your packet you will find these proposed policies that I have put together so far. I was looking particularly for policies pertaining to the Commission as a group and Commissioners thinking that, if nothing else, it would be a very handy item to present to new commissioners in a shortened form. And my husband, Paul Pettigrew, helped me with these, and we put together the mission of the Ethics Commission which we got from the web page — then the establishment and purpose.

“You will note at the bottom of each page is the reference of where it was found and, as in this case, partly in the Constitution, partly in Title 74. The membership of the Ethics Commission — there it is all in a concise form on one page — but five private citizens and who appoints them and how they have to be divided by congressional district and political party and that no person shall be appointed to the Commission more than two times in succession and how a vacancy is filled. And then, one on limitations of Ethics Commission membership, and then operation of the Commission — like how the meetings work, how you determine a quorum.

“And, I also put in that same policy the policy we adopted at our last meeting, July 11, 2008, about the Executive Director. Even though that had been adopted in 1995, but because we didn’t have it in front of us and we wanted to be clear, we adopted it again, and so forth. Now, our Director, Ms. Hughes, has sent to all of us the job descriptions that we asked and also the other policies pertaining to personnel that are in existence. And in case you don’t know this, our Chairman, Don Bingham, has, as his area of expertise in practice, employment law. So, I really thought, when time permits, he can look those things over and see if he wants to make any suggestions.

“Some of them are just law. We have to have them, of course. But, I didn’t include them here because we haven’t really had time to look at them and think about organization and so forth. I really don’t want this to be a big document because then you’re back in the same situation as trying to find them in the rule booklet or the law. But, I would say any policy that is in existence, you say this is our practice, this is our policy,

whether it is written down or not, those are the things we need to have in here — the things that you cannot find in the rules and the law.

“So I would ask, as time permits, for the staff to send something over on email or something that you say we do that we need to write it down. I know that Commissioner Raley has an idea. He says this is something we always do, and we probably need to have it in written form and that kind of thing. So, this is just a start and it’s not approved. I don’t even want you to think of approving it today because I want you to look it over. Thank you.”

The Chairman said, “I think this will be useful in ways that we probably don’t even recognize yet. Yes, it will be very informative for new members. I wish I had had it. It will be informative for the public, whoever wants to understand how we do things and needs to know things about how we operate — again, that aren’t in the laws and are not in the Ethics Rules. It will be helpful for our employees to have these policies and practices in written form. And, like I say, it probably will turn out to be valuable in ways that we don’t even understand yet. And, I really appreciate all the time that not only Commissioner Pettigrew, but her husband Paul, have put in on this. They just jumped in and did it and we are the beneficiaries of it and it’s going to be very helpful.”

Loy said, “Mr. Chairman, I just want to comment that anyone who doesn’t believe in evolution hasn’t witnessed the procedures of this Commission over the years. Things just keep getting a little better and easier for us to understand — easier for the public to understand. And, I commend Dr. Pettigrew for this kind of work and contribution.”

Pettigrew said, “Thank you.”

Administrative Report

The next item on the agenda was the agency’s administrative report. Hughes reported there were no changes.

The Chairman said, “Speaking of our staff and the administrative report, did somebody tell me that our Principal Assistant, Patti Bryant, had a birthday coming up?”

Bryant said, “It just passed. Don’t mention it.” The Chairman said, “Happy late birthday.” Bryant said, “Thank you very much.”

The next item was a proposed closed/executive session, authorized and required by Title 25 O.S. 2001, Section 307(B)(4) and (7);

Confidential Matters Set
Forth On the Agenda

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 19 on the agenda were made confidential by law. It was her advice 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. Raley so moved. Pettigrew 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. Pettigrew so moved. Raley seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously.

Loy moved that, with respect to IV-2006-012, the Commission continue the item with direction to the Staff to prepare a public reprimand; that with respect to IU-2007-007, that the Commission take no action; that having completed its investigation in IV-2007-008, the Commission use its discretion to refer a copy of the investigatory records to the appropriate prosecuting authority for prosecution or action provided that if prosecution or action was not commenced within a reasonable period of time as determined by the Commission, it might proceed under Section 4 of Chapter 30 of the Constitutional Ethics Rules and that the Commission issue a public reprimand that day, subject to the approval of the Chairman or in his absence the Vice Chairman or designee, of the document; regarding IU-2008-001, that the Commission approve the letter prepared as directed by the Commission; that in IU-2008-004, the Commission find an adequate basis and sufficient evidence for the belief that a violation of its Rules may have occurred, that the respondent committed the violation, that the jurisdiction in which the violation occurred has been ascertained to be in Oklahoma County, Oklahoma, that an investigation of the information was warranted, and

that the Commission open an investigation in this matter and direct its staff as discussed in executive session and authorize the issuance of subpoenas; with regard to IU-2008-005, that the Commission dismiss the matter; that in IU-2008-006 the Commission find an adequate basis and sufficient evidence for the belief that a violation of this Title may have occurred, that the respondent committed the violation, that jurisdiction in which the violation occurred has been ascertained to be in Oklahoma County, Oklahoma, that an investigation of this information is warranted, and that the Commission open an investigation and direct staff as discussed in executive session and authorize the issuance of subpoenas; with regard to CV-2008-00-7, that the Commission lacks resources to proceed otherwise and assess late fees.

The Chairman called for a second. Raley so moved. The Chairman said, "With respect to the folks who are still here, I know we have a lot of items and we kind of make our motions too quickly. If there — and I know you will get a chance to examine these later on because they are part of the minutes — but if anybody has a question now or needs something repeated... I'm well aware that — again, we go through these quickly because we have decided what action we want to take and we made a motion — but obviously, we can't discuss the particulars. But, I'm just wondering if anybody had any questions about the motions or what type of action is being moved."

Lee Slater ["Slater"] said, "I do. On the one that is being referred for prosecution, did I hear correctly that you are going to issue a public reprimand today?"

The Chairman said, "Mr. Slater, I believe you are referring to IV-2007-008 and you are correct. That matter will be referred to the appropriate prosecuting authority, and the Commission will issue a public reprimand."

Hughes said, "... subject to the approval of the Chairman, but it will not be issued today."

Adams said, "It is issued today, but we don't have the draft approved by the Chairman."

Slater said, "I thought that's what I heard."

The Chairman asked, "Are there any other questions about the motion that is pending?" There were none.

Roll was called for purposes of the vote, and the motion passed unanimously with the Chairman abstaining on IU-2008-001 because he had disqualified himself.

New Business

Next on the agenda was new business. There was none. The Chair announced, "We have tentatively set our next meeting for Friday, September 19 here at the Capitol. That is tentative. But we are going to very quickly check our calendars and firm that up or get another firm date. But right now it is set for September 19."

Adjournment

The Chairman then announced that all items of business listed on the agenda had been addressed. He thus called for a motion to adjourn.

Action followed, as Loy so moved. Pettigrew seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously.

The Chairman then declared the meeting to stand adjourned.

REBECCA ADAMS, General Counsel

Approved On Behalf Of The Commission:

DON BINGHAM, Chairman

MH/pb