

MINUTES OF REGULAR MEETING
Of The
ETHICS COMMISSION
STATE OF OKLAHOMA
Held
OCTOBER 17, 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 Friday, October 17, 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; Patricia Bryant ["Bryant"], Principal Assistant; and R. Darey Roberts, Investigator. Observing all or part of the meeting were: Shawn Ashley, *Capitol Network News*; Tom Prince, attorney; Cheryl Purvis, Senate staff; Jeff Packham, *Journal Record*; David Glover, Common Cause Oklahoma; Peter Rudy, *KTOK Radio*; Michael McNutt, *The Oklahoman*; Mick Hinton, *Tulsa World*; Darci McKee and Cathy Welch, Campaign Technologies; Jason Doyle, *OETA*; Lee Slater, attorney; Amy Alden, House staff; Ken Fagins, Oklahoma Department of Health; and Representative Mike Reynolds.

Consideration Of Electing
Commission Chair And
Vice Chair

The next item on the agenda was consideration of electing a Commission chair and vice chair for the next 12-month period.

The Chair announced, "Before I entertain nominations for the election of a new Commission chair and vice chair, I want to jump ahead and remind everybody that the Ethics Commission — I get to do this because I'm from Tulsa — will meet next month in Tulsa. We hope that

everybody can make it and encourage people who can't make the Oklahoma City sessions to go. We have a beautiful OSU campus in Tulsa, 700 N. Greenwood. That's where our meeting will be. It's tentatively set for November 14. Be sure and check our website and our postings for the exact date. But, the November meeting of the Ethics Commission will be in Tulsa."

The Chair continued, "Item 3 on the agenda is consideration of electing a new Commission chair and vice chair. Do we have any nominations for the office of Commission chair?"

Loy was recognized. He stated, "Mr. Chairman, we don't have a large group to chose from here, so it's going to be one of the two people down there on the end. With his good experience and having been a longer term member of the Commission, I would like to nominate Captain John Raley as Commission Chairman."

The Chair said, "I don't know that we need a second to that." Adams recommended one. Pettigrew seconded the nomination. The Chair continued. "We have a nomination and a second that Commissioner Raley be elected chair for the next 12-month period. Let's call the roll."

Roll was called for purposes of the vote, and the motion passed unanimously with Raley abstaining.

Bingham asked, "Does John need to be sworn in?" Adams replied, "No." Bingham inquired, "Then shouldn't he take over the agenda at this point for the consideration of electing a new vice chair?" Adams said, "That is correct. That is what we typically do." Bingham requested, "Mr. Chairman, if you will proceed, please, we would appreciate it."

Chairman Raley said, "Thank you. And, I thank my sister and brother commissioners for allowing me to serve in this capacity. As everyone in this room knows, we serve without pay. We do get our mileage, but we buy our own lunch. We do it because we love this state, and we want to serve the state. And in that respect, I would like to suggest that all of us, staff and commissioners, need to express a deep feeling of appreciation for our Chairman who has served so loyally and so faithfully and so effectively this past year. Commissioner Bingham, for your intellect, your keen sense of justice and fairness, your courage in times of adversity, your unblemished integrity and the very high level of

leadership that you have established this year, we are all grateful. And, the citizens of this state may not be aware of it, but they owe you a debt of gratitude as well for your service. And so, very well done, Mr. Chairman. We all appreciate what you've done."

Loy said, "Those are the things that I was trying to think of to say, and it just didn't come as easy to me."

Bingham said, "Thank you. I appreciate your kind words, and I appreciate the privilege of just serving on the Commission. People don't realize what a privilege it is to sit here. But, I will say this. I can't resist, John — because it's your meeting from now on — but, if you asked me what my year has been like as chair of the Commission again, I would emphasize that it is really an honor and a privilege or the essence of those words.

"I also have to add a story. I believe in the 1960's — at least this is the way I remember Robert Henry telling the story — in the 1960's the folks at the *Daily Oklahoman* were asking about our former governor, Bill Murray. Apparently the discussion was, 'Whatever happened to Alfalfa Bill? We just have not heard from him in quite a while. Does anyone know? Is he still alive? Is he still in Oklahoma? What's going on with Alfalfa Bill, one of the most colorful and certainly important historical figures in Oklahoma government?'

"So, they assigned one of the younger reporters to go try to find former Governor Murray, and he did find him, I believe, in a hotel in Oklahoma City. The governor had fallen on hard times, but he was still living in the city, so the young reporter rang him up and asked him if he could talk to him, and Bill Murray said, 'Come on up.' So, he went to the Governor's room and introduced himself. 'I'm a reporter from the *Daily Oklahoman*.' And, Governor Murray very graciously had him come on in. So, he said, 'Go ahead and ask your questions, son.' The reporter's first question to him was, 'Well governor, how would you characterize your term in office?' Alfalfa Bill looked at him and said, 'Well, son, it was just one damn thing after another.' It's been fun to be chair. It's been challenging, and as I said, it's really been a privilege. Thank you."

Chairman Raley said, "The next item on the agenda is consideration of the election of vice Chair of the Commission for the next year. The floor is open for nominations."

Loy said, "Mr. Chairman, I would like to nominate Commissioner Pettigrew as Vice Chair."

Bingham said, "I would like to very gladly second that nomination."

Roll was called for purposes of the vote, and the motion passed unanimously with Pettigrew abstaining.

The Chair said, "Congratulations Vice Chair Pettigrew. We will benefit immeasurably from your experience and your wisdom, and I look forward to working very closely with you during this next year. We are very pleased to have you."

Pettigrew said, "I am very honored. I feel like I am very new at this to be assuming this role, but I didn't come on the Commission to make life easy for myself. So, if you think I'm up to the challenge, then I'm willing to take it on, Mr. Chair."

The Chair said, "We believe that you are more than able to do a good job, and we know that you'll do a great job, and you're certainly up to the task."

Public Comment On Or
Request For Constitutional
Rule Amendments

Next was a public hearing, consisting of taking testimony and comments, as well as consideration of and discussion, on promulgation of amendments and/or modifications to the Constitutional Ethics Rules ["Rules"], Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp. 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 October 17, 2008 Regular Meeting of the Ethics Commission*, incorporated by reference in this agenda as fully set forth in the document.

The Chair announced, "The rules were in the packets. There are copies of the pending [amendments] over on the table. And so, the floor is open now for anyone who would like to comment about any of the pending [amendments]. There are a couple of new [amendments]. Or, there is one [amendment] that has a [change] to it that perhaps we should discuss. And, then I think Vice Chair Pettigrew and Commissioner Bingham had a dialogue last month about some of your pending [amendments] that you may want to discuss. The floor is now open for

any discussion. For any of the members of the Commission or anyone that is in the hearing room, the floor is open. Do we have any discussion?”

Pettigrew asked, “Mr. Chairman, would you mind doing what we did at the last meeting which is, at least, looking at them one by one. Maybe they don’t need as much of an explanation as they did last month. But, this helps us to focus on each rule so that when we make a decision, we will know that we have made a wiser decision than we might otherwise have made because we will be a little more in tune with it, and I think it would help.”

The Chair acknowledged, “That’s a good idea. We will do so. I am going to look at the Synopsis of Amendments. Everyone has a copy of it and can follow along.

Amendment #1

“Amendment #1 is one that was suggested by H.J. Reed and Mr. Slater. Mr. Slater is here, and I think H.J. came in a while ago. Do I see him? Yes, H.J. would you like to comment on it?”

Reed said, “I’ll let it stand for itself this time, Mr. Chairman.”

The Chair replied, “Thank you, sir. Mr. Slater, do you have any comments?”

Slater said, “No, sir.”

Amendment #2

“The next one, [Amendment] #2, this simply requires more specificity in the delineation of what a specific expenditure is supposed to be for [and to whom it is made]. In times past, we’ve seen sort of a generic word in there for campaign expenses or something that could mean a lot of other things. We’ve seen, and I think our friends in the media point this out to us from time to time, that we are unable to determine really what the expenditure was for [and to whom it is made]. So, this is just an effort to give us a little bit better idea — and the public a better idea — and I think it will. I’m sponsoring this. I think it will give us more transparency in government. I see some real merit in it. Does anyone have anything further to say about this?”

Pettigrew said, “I think also this will help to provide transparency. I would hope that, maybe in the next couple of months, we could hear some input about whether or not this amendment will add extensive work for the filers. We want a good [balance] between what could give us

more transparency and what is reasonable to expect. I do not know the answer to that. But, I'd like to have some input between now and January. I'm wondering if \$50 is low. It may be that — at least for ease of compliance — we might could raise it. I have not had any input one way or the other, so I would request some.”

The Chair said, “Thank you. Any other comments about that rule [amendment]?” There were none.

Amendment #3

The Chair announced, “This one [Amendment #3] is continued.

Amendment #4

The Chair continued. “[Amendment] #4 was submitted to us by a law firm in Tulsa. Mr. Andrew Downing was here a couple of months ago, and we discussed it at some length. Apparently, this proposed rule mirrors a similar rule in the federal system that would allow twice yearly solicitation of corporate employees. Is there anyone who would like to discuss that or ask any questions about it?” There was no one.

Amendment #5

The Chair said, “In [Amendment] #5, which is one that I am sponsoring, it has to do with solicitations for charitable events. I see some real merit in this. Is Caroline Dennis here today?”

Hughes reported, “No, no she is not.”

The Chair continued. “We are indebted to Caroline Dennis for providing a suggestion that we have adopted in this rule which would allow solicitation for other humanitarian causes or for fund drives like the United Way and so forth. I think her suggestions are very meritorious, and we have included those in here as well.”

Hughes said, “Mr. Chairman, they were not included this time. I think you told me you wanted to look at them during the next month, and I didn't include them in this amendment.”

The Chair said, “OK. Well, I would like for those to be included, so we can discuss it.” Hughes said, “We will get it on the internet.” The Chair continued, “I've read over Ms. Dennis's recommendations. I think they are good and something that we need to include, and it will be included next month for discussion.”

Amendment # 6

The next one, [Amendment] #6, creates a “gift list”. Dr. Wood has offered this. This would mirror, somewhat, a proposed law/bill that was submitted to the Legislature. Apparently, it was not adopted by the

Legislature. [One alternative] would create a '[No] Gift' list of those legislators who would prefer not to receive gifts, [and a second alternative] a 'Gift List' of those who are willing to receive gifts, as I understand. Dr. Wood is not here, is he?"

Hughes reported, "He is out of state."

The Chair asked, "Is there any further discussion on that?" There was none.

Amendments #7 and #8

The Chair stated, "The next two, Dr. Pettigrew has sponsored, and I see some real merit in both of them. I'll yield to you, Jo, if you would like to discuss either one of those."

Pettigrew said, "I have no further discussion of them at this time. I welcome anyone to work on the language to improve it. Other than that, I'll leave it until next month."

The Chair asked if there was any further discussion or question. There was none.

Amendment # 9

The Chair announced, "The final one is Amendment #9. It is another rule that is proposed by Dr. Wood. In effect, it would limit things of value to zero. As we all know, last year — this year rather — we adopted a rule, and it was finally made a law because the Legislature saw fit not to deny it, that prohibits things of value in excess of \$100 [annually]. Dr. Wood's rule would limit it to nothing. Is there anyone who would like to discuss this proposed rule?"

Bingham commented, "I see that — at least when I got here — there was a document entitled 'Gift Law Bans in Seven States'. I'm going to guess this came from Dr. Wood."

Hughes answered, "Yes, it did."

Bingham continued. "[It] probably arises out of some dialogue we had with him at the last meeting when I said, if he had the time and interest and wanted to tell us about states that have outright bans or what appear to be outright bans with or without exceptions — if you want to do some research on that — we'd take a look at it. I think this is the result of that. I haven't had time to read it over. I appreciate him doing that, and it looks like there are some states who have various provisions that he has assembled here. If anyone wants a copy of that to test the

accuracy of it or whatever, it's something that we are going to take a look at."

Bryant announced there were copies available at the front table.

David Glover ["Glover"] commented. "I am a board member of Common Cause Oklahoma, and Dr. Wood is on the board also. I'm not here to speak specifically to that amendment but just wanted to generally speak to the amendments overall. Common Cause Oklahoma appreciates and commends the work of the commissioners and the staff for doing such a wonderful job and trying to do the good work for the people of Oklahoma. And, any of the actions that you can do to increase openness and provide more information and to reduce influence on the process, we feel strongly in support of. Thank you."

The Chair responded, "Thank you very much. And please convey to Dr. Wood our appreciation to him for submitting this. This is the way the system is supposed to work, folks. We need input from professional folks, from citizens, from legislators, the people who are going to be dealing with these rules on a daily basis. We don't want to be isolated from the public. We want to absorb from the public their wisdom and their experience in formulating these rules. So, would you please convey that notion to Dr. Wood. Tell him that we appreciate his thoughtfulness in submitting this to us. And, ask him if he would be willing to come to our next meeting — although we will not be in Oklahoma City, we will be meeting apparently in Tulsa, if not Ponca City, we'll see — so that we can discuss it directly with him — if you will do so, sir.

Bingham commented, "Since we have received at least one person's initial summary of the legal or rule provisions in these other states who have a so-called outright ban on gifts to elected officials or to state officials, it raised the question in my mind, 'Alright, what's been the experience in these states as they enforce and administer what's before us on paper?' They may have had good experience or bad experience, depending on your criteria of how to judge those or mixed results. I'm not sure how we would determine that. It all depends on your source of information. But, you know, to find out on paper what other states have adopted is interesting, and it's worthwhile to look at in many instances, but then, are they happy that they did it? Again, it depends on who you ask and your source of information.

"What has been the experience in these states that have had a ban? Are they contemplating any changes? I think this is a good starting point

for looking at modifying our rule. I'm not saying that I favor any changes in our current rule. But, once we have this information, it raises all kinds of initial questions, which is, if this is what they are doing in other states, how do the people feel about it? How do the elected officials, the lobbying community feel about it and so forth? So, I'm very interested in this and again, it's great that Dr. Wood was willing to put this together.

"And, to the extent that anybody else knows what the experience of these particular states has been and continues to be and wants to share that with us, we take phone calls. You don't have to go through the staff. You are welcome to call the staff. They are very busy. You're welcome to call any of us individually. John as Chairman or Jo as Vice Chair or any of us sitting members. And tell us, 'Hey, I heard it's not working in Illinois. Or, it's working great in Illinois.' Whatever information you might be able to find on that. Finally, if I may, Mr. Chairman, this is our October meeting. What's our deadline for voting on new rule changes?"

Hughes responded, "...anytime before the first day of the session this year."

Bingham replied, "So, time is short. If you have some input, give us a call, send us a letter. Appear at a meeting and speak. We need to get our feedback because we don't have a lot of time left.

The Chair said, "Thank you, Commissioner Bingham. I have not had a chance to read this report. I will do it this afternoon. Of course, we cannot necessarily follow the exact position of every state or any state. Each state has its own laws and traditions, customs, all of which go into play on determining what is and how much should be a thing of value. But, this document will be very valuable. And that's one reason why I do hope that Dr. Wood will be with us either in November or December so that we can talk to him directly."

Hughes said, "I just want to put a plug in for COGEL because that is the opportune time to talk to these states and to find out their experience in the ethics update section. That's where we do it every year, and there's a lot of interplay between the members. We encourage you to go."

The Chair responded, "That will be extremely valuable to draw upon the experience of other states. I see some merit in this. I can also see some potential problems, and that's something that we really need to discuss. Any other discussions about proposed rules?"

Loy said, “Mr. Chairman, on this gift ban, COGEL Conference would be good, but our Director is a past President of that organization, and as a driving force in it, I’d like to suggest that Marilyn take a telephone in her hand and call some of these people and ask them directly.”

The Chair acknowledged, “That’s a good idea. Marilyn is in a unique position to do that. As all of us know, Marilyn served not too many years ago as the national president of COGEL. She knows all of these folks, and she talks to them all the time. Marilyn, if you have time, that would be a good idea to talk to some of these folks and see how it’s working for them.”

Hughes said, “I know Wisconsin’s had a no-gift rule for several years, and he [Roth Judd] used to teach the ethics update every year. So, I’d be happy to talk to all of them.”

Bingham said, “Mr. Chairman, I think it would be extremely valuable to get COGEL’s feedback on how they perceive these laws in these states. Also, though, we have some lobbyists here. We have some folks here who represent lobbyists. What about your counterparts in these states? Would they have the same perspective that the ethics commissioners [officials] would have so far as how these rules have worked or not worked or created problems or created benefits? Those of you who are here representing the media, what about your counterparts in these states? How do media representatives in those states perceive that these rules are working or not working or creating benefits or problems in these states? There will be different perspectives, but I realize folks don’t have unlimited time to just make these inquiries. But, anybody who has the time and the interest, we certainly would encourage it and we certainly will listen to what you find out.”

The Chair announced, “This most surely will be an agenda item on our next meeting, and we’ll set aside sufficient time to discuss it in some depth at that time.”

Reynolds

Representative Mike Reynolds [“Reynolds”] was recognized. He said, “Thank you Mr. Chairman. I had one little issue today that I wanted to ask you all about. I could visit with commissioners individually. But, sometimes when people are dealing with the Ethics Commission, they don’t understand a rule, and as best they can, they try to interpret it. Maybe they ask for advice of other people. Maybe they go to Marilyn to ask. And, then occasionally, what will happen is the rule will have a gray

area, and the person tries to — I'm trying to not use a specific example, if you will — but the person does something as best they understand that rule. And the frustration, the reason I bring this before you is, I understand the dilemma that the Commission has about seeing all of the circumstances and the facts in a situation that you can't make a determination. And, it becomes difficult for an individual.

“For example, we have rules about affiliated committees and local committees, and you have to look in various areas to understand. A person can observe on the Ethics Commission website that candidate committees all begin with the number 1. And a person would assume that the number 2 stands for a different type of committee. And [number] 3, another type of committee. And, you would reasonably assume that that's why they were designated that number. And so, you kind of ask the question — with all due respect to Marilyn because I understand she probably can't give you something in writing without asking the commissioners and bringing it before the meeting — but, let's say that I wanted to, for example, give money to some organization, and they needed it now, and I said my understanding of the rules is that I can do this, and so Marilyn would graciously point you to the pertinent language and say, I think maybe area 1 and area 2 and area 3 is what you need to look at. And, you look at that, and you have somebody else look at that, and you satisfy yourself that that's appropriate, and you do it, and then you find out later on you can't do that.

“There's not a venue for someone to come and ask the commissioners outside of this room whether they can do that or not. I don't know if there is some way to come up with a more informal process that is not so time consuming that answers what some people might perceive as relatively simple questions — could be answered in a manner that the person was satisfied that they were not doing anything that was unethical. Am I kind of making sense here?”

The Chair said, “Representative Reynolds, I see that as a real problem, and I can understand the frustration that you and other legislators may have or other members of the public or other employees. There are some things that Marilyn can immediately answer. I know of no one in this state that has a greater knowledge of rules of ethics than our executive director. She is 'the' authority in the state on that. There are some things, however, she cannot answer that are matters of policy or interpretation. That's the obligation that falls on this body, as you well know. All of us are open for phone calls or communication with anybody — legislator, public or whatever. But, if it's a policy matter, we are

precluded from offering an answer in the name of the Commission because the entire Commission must act on that.

“So, some times you may have to wait 30 days until the next meeting before we can get you an answer. In most instances, however, our executive director is uniquely qualified — more so than anyone else that I know. Thanks for those questions. I know that doesn’t resolve your problem.”

Reynolds said, “That’s alright. If I might just follow up. So possibly, if I went and asked and the Executive Director said, ‘I’m sorry. I can’t really give you a specific answer on that’ — and she’s been gracious to help me in the past try to phrase questions — but, is that the appropriate way to do that? To ask, ‘Can you help me phrase the appropriate question so that it can be brought before the commission at the next meeting?’ Could it then be discussed publicly at the meeting? I don’t know if we have an item on the agenda to discuss rules interpretations or things like that. In other words, I’m looking for some way that the public — and, of course, we could be up here all day discussing minor issues. I know that’s not the purpose of your organization. Just please give some thought to that.”

The Chair said, “The members of our staff are always available to talk to the public as are the commissioners. You and I have had several telephone conversations, and I think I usually preface my answer saying I’m speaking only for myself. I can’t speak for my brothers and sisters. But, what you have proposed, I think, is a process that we have initiated, and we have adopted, and that is, if a matter of policy comes up, the Executive Director or our General Counsel can help you phrase the question in such a manner and it does reflect on a particular rule that has been adopted, then we can put it on the agenda, and we can have open discussion when it’s on the agenda.”

Reynolds said, “Thank you.”

Bingham said, “Mr. Chairman, if I may. I’m not sure if it’s a matter of policy. Obviously, we have to act as a body. But, are you asking — I’m trying to think if there is an analogy — if an employer has a question about whether or not its employees are subject to overtime or minimum wage law or something, I think there is some process by which they can ask the U.S. Department of Labor to give them a written opinion. And, that written opinion — whether it’s later on deemed to be legally correct or not — provides some type of safe harbor for the person

who took the trouble in good faith to ask for the determination. I think you can do the same thing with the IRS. You can ask for a written determination. ‘Are my employees or the people I hire contractors or are they employees and do I have to do withholding and that type of thing?’

“And, the IRS will give you an opinion, and later on, if some court decides that’s not correct, or the IRS changes its mind, at least you have some protection from some exposure of penalties or interest or something because you have a safe harbor in that you’ve asked in good faith and made a full and fair disclosure to the agency. And, the agency gave you back a written answer, and you relied on that answer. You know, it might be worthwhile for us to talk about doing that. Of course, safe harbor opinions are, if you create that, it is extremely time consuming because we have to get our general counsel and/or our executive director involved. And then, if they think it’s too — if it does at some point involve a matter of policy, applying policy to facts — then it may have to come before the full commission.

“I guess I’m just expressing sympathy that somebody who is really trying to — they’ve read the rule and they are trying to conform their conduct or their campaign’s conduct to the rule, and they take the trouble to make a call in good faith — wanting to do the right thing and simply wanting to know what course of conduct will or will not violate the rule, there ought to be some way to protect them from at least the most severe consequences of getting the wrong advice or having staff tell you one thing, and then maybe later on, the Commission decides we don’t agree with staff. We think that’s a violation. Whatever it might be.”

Hughes said, “I’d like to go through our procedure a little bit. When someone asks us a question that on the rules is easily answered without there being a possibility of two answers, staff does not hesitate to say this is what the rule says. This is how we would interpret it. If there is a possibility of an ambiguity, then the staff will not answer it. They will refer it to the Commission. If someone wants something in writing, we have a process which requires us to put it in writing, get it approved by the Chair or the Vice Chair, then any member can convert it to an ethics interpretation request. Especially if they disagree with it, they would want to do that.

“So, we have a long process now. An ethics interpretation request requires that it be put on the agenda. We have to have a hearing, and it’s finally issued which takes more time than it used to. But, I also wanted to comment on if something is in the past — if there has already been

behavior, and somebody wants an opinion, the staff's response is usually, 'We will not comment on something that has the potential to come before the commission — especially if there is the possibility of two answers.' So, that's our procedure now."

Bingham said, "So, it sounds like — and I agree with your last comment for my part — but, if you're calling before you act, that's one thing. If you call to ask for an opinion about what you've already done, that's a different thing, and you can't really hold the line on that. But, it sounds like we do have a procedure in place if you want to call it a safe harbor which is either the clearly answerable question or one where the argument can be made for more than one answer. Then if they want that determined, and they want it in writing, they need to submit a written request for that."

Hughes replied, "Yes."

The Chair said, "Thank you, Representative Reynolds, and thank you, Ms. Hughes. Representative Reynolds, does that assist you at all?"

Reynolds said "Let me give you — I won't give the specific example — but I saw a little problem with the procedure policy issue and that is, for example, my understanding — and I realize my understanding was inappropriate now with regards to the use of the term 'affiliated committees'. In fact, I was using that interchangeably with 'local committees'. But, I also see that the ethics interpretations and the rules also in my mind use that interchangeably. So, it's not really a matter of policy.

"Does this mean a local committee in this paragraph or affiliated committee in this paragraph? And, it's a matter I need to clarify — it's not a finding of fact. Although, I suppose it could be a finding of fact if that committee is a local committee or if that committee is an affiliated committee. But, my question is, 'Does it apply over here or does it apply over here?' A local committee can receive, I can contribute my candidate funds to a local committee. I can't contribute my candidate funds to an affiliated committee — that kind of thing. And, just the way our committees are laid out, the solution seems simple to me. Type 2 committees are affiliated. Type 4 are local, and it appears that's not so easily determined. But it's not really a matter of policy. And, if I waited for six months to try to contribute those funds or whatever, then you can see the problem."

The Chair said, "Representative Reynolds, let me suggest something that might be helpful to all of us. If you have a specific question that is going to require interpretation or a matter that is going to require a determination of what our policy should be, it would be helpful to this body if you would submit it in writing so that we will have a chance to review it before our meeting."

Reynolds said, "Yes, sir."

The Chair continued. "That will save all of us a little time. Philosophically, I think all of us would agree that these rules are designed primarily for guidance, for information, and not necessarily to be punitive. We would much prefer that everyone understand what the rules are rather than to punish for misuse of the rules.

"Alright, anybody else have any questions or comments at this time?" There were none.

Approval Of Minutes

Next was consideration of whether to adopt the minutes [both open and closed sessions] of the regular meeting held September 19, 2008.

The Chair called for corrections or amendments to the proposed minutes. Hughes was recognized and said she had the following corrections to the minutes. "On page 9, on the next to the last paragraph, about the eighth line, it says, 'Caroline.' It should be 'Carolina.' On page 2, in the first full paragraph, the fourth to the last line, the last word says 'Amendment #3.' We need to change that to 'Item # 3.' I think the word that was said was amendment, but it doesn't make sense because it was an item on the agenda. Then on page 11, the last paragraph begins 'Then also, I stand corrected by our Executive Director who tells me....' It should have been 'if our Executive Director tells' and strike 'who.'"

The Chair asked if there were other corrections? There were none. The Chair asked for a motion that the minutes be adopted as corrected. Bingham so moved. Pettigrew seconded the motion. Roll was called for purposes of the vote, and the motion passed unanimously.

Hughes acknowledged, "I'd like to thank Vice Chair Pettigrew again for her help with the minutes."

Ratification Of
Expenditures

The Chair then called for consideration of agency expenditures for

the period beginning September 1, 2008, through and including September 30, 2008.

Loy moved to ratify the expenditures. Bingham seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously.

Consideration Of FY-2010
Budget Request

The next item on the agenda was consideration of the Ethics Commission Fiscal Year 2010 Budget Request.

Hughes said, "I have nothing to add to the budget that was sent to you. Copies were sent. It was turned in on the date it was due, October 1. We are proud of that."

Loy said, "Mr. Chairman, I have reviewed the Strategic Plan and Budget Request for FY-2010. It is an extremely complicated document, put together by our staff — mainly, Patti Bryant, I think."

Hughes said, "Yes."

Loy continued. "I commend her for the good work, and especially seeing the request for additional staff as a head-liner in the budget request, I move approval of this plan and the budget request."

The Chair said, "Thank you, Commissioner Loy. Is there a second?"

Bingham said, "May I ask a question?"

The Chair answered, "Yes."

Bingham continued. "This document has already been submitted."

Hughes said, "Yes, it was due October 1."

Bingham said, "OK, so do we need to approve it?"

Hughes answered, "You approved the items. This is the complete document. It wouldn't hurt to approve it."

Bingham said, "OK. Thank you."

The Chair said, “In that regard, let me ask a question. Refresh my memory. Procedurally, or perhaps under Roberts Rules of Order, we should have a second before we go into discussion. Is there a second to the motion on the floor?”

Bingham said, “I will second it so that we can get to a vote. I may not vote to approve it. I’ll second it so that we can discuss it.”

The Chair continued. “Let me ask the director a procedural question. Has this been submitted to the Legislature as yet? Are we waiting for approval before we do that? Procedurally, where do we go from here?”

Hughes responded, “It is submitted. You voted at the last meeting on what was to be included in the budget. It has been included and has been submitted. A lot of this, Patti can tell you better than I, but a lot of this we plug in what we are asking for and it shoots numbers into all of these different places.”

Bryant said, “It is a program. You have forms that you fill in and then the program prints out the report.

Hughes said, “So, yes. It is a final budget. That doesn’t mean that the Commission couldn’t change their mind on an item. It would require changes throughout the budget.”

The Chair said, “I understand. I think the question that I am asking — and I’m not very adroit at asking it — but if we approve it, does this become a public document?”

Hughes said, “It is a public document now. It really doesn’t change anything other than you ratify the document.”

The Chair said, “I just wasn’t sure procedurally where we are on that.”

Hughes said, “It has been turned into OSF [Office of State Finance] — copies to the legislature. It’s completely distributed.”

The Chair said, “One other item. We are asking for additional FTEs, obviously, just as we have for the last 18 years, I suppose. So, we are asking for additional FTE.”

Hughes said, “Yes, we are.”

The Chair asked, “Are there any other comments or discussion on the motion on the floor?”

Bingham said, “I was just going to say I’m going to — believe me, I appreciate the time and the efforts that went into this. I just haven’t had a chance to really study it — and, what I’m going to do is I’m going to abstain today. Believe me, that’s not a rejection or a disavowal of this. It really isn’t. I just need to look at it and study it and ask questions. And, I’m glad we submitted it on time, and if it doesn’t need our approval, then it is a moot point anyway. Again, I am in no way criticizing it. It’s just, to vote to approve this when I just haven’t had a chance to go through it — I mean I’ve had it for a few days, it’s just I haven’t had time given my other schedule to look at it — and I’ll abstain for that reason, not because I’m rejecting it or voting against it or disavowing it.”

Adams said, “Mr. Chairman, would the commission like to continue this matter to the next meeting to give the commissioners more time to study the document?”

The Chair asked, “Commissioner Bingham, would you feel more comfortable if we continue this and put it on the agenda for next month?”

Bingham said, “I personally would.”

The Chair asked, “Is that going to impact upon our time?”

Hughes said, “That’s no problem.”

The Chair continued. “Commissioner Loy, would you be willing to amend your motion?”

Loy said, “I withdraw the motion.”

Pettigrew said, “I think that’s a great idea. I also have a lot of study to do before I feel comfortable with the vote. I think it’s great that we take it off the table. I did have a question to ask. Can someone tell me where it is in the statute or why we submit a five-year plan?”

Bryant said, “The Strategic Plan is required every two years. It is a five-year plan.”

Pettigrew asked, "Every two years?"

Bryant said, "Every two years the Office of State Finance requires that we submit a five-year strategic plan. That's just part of the program. So, every even-numbered year we submit that."

Pettigrew asked again, "Every two years we submit a new five year plan?"

Bryant answered, "Exactly. All agencies do it. It's just the way it is."

Pettigrew said, "All of them do it. Ok. These are just things that I don't know. I'm glad to get that information."

The Chair commented, "I wasn't sure of that as well. Is there a motion that the matter be tabled until next month?"

Bingham moved that the agenda item be continued until the next meeting. Pettigrew seconded the motion. 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 a report on compilation of a booklet of all policies pertaining to the Commission and its staff.

The Chair said, "In this respect I'm going to call upon Vice Chair Pettigrew to give us a report."

Pettigrew said, "Thank you, Mr. Chairman. I do think that we have the policy book ready, and I would like to just briefly look at it and ask you to once again review it so that at the November meeting, if there are no further questions, we can make a final adoption of this policy book."

The Chair said, "Let me suggest this." Pettigrew agreed. "I have read through it, and I am much impressed with what has been presented here. There are a couple of things I would like to discuss, and since there is no time constraints here, perhaps we could take final action on this maybe next month."

Pettigrew said, "I would suggest that anyway."

The Chair continued. “It would give us a chance to review it in depth and also to exchange some ideas. And saying that, I also want to commend Vice Chair Pettigrew for an enormous amount of work. She volunteered to do this. She is certainly qualified by her experience and education and background to prepare a document like this. This is going to be extremely valuable to, not only those who have been on the Commission for several years, but also any new commissioners that come on the Commission later on to have this available. And, you are certainly commended, Dr. Pettigrew, for the amount of work that you have put into it. I know you’ve spent an enormous amount of time doing this. “

Pettigrew said, “Thank you, Mr. Chairman.”

Bingham said, “I wish to second your comments. It’s just a great piece of work — very helpful, very helpful to have all of this in one place and have it set forth and sources of authority for this. But, I do have a question of Rebecca. Rebecca, one of the very helpful sections in here was written by you, The Procedural Steps in Investigations and Prosecutions. And, I noticed it was originally issued by you in January of 2004. Have you looked at this to see does this still accurately reflect what we are doing today?”

Adams said, “It is absolutely correct. There have been no changes in the provisions of the rules that the brief is written on. So, it is absolutely current.”

Bingham said, “Thank you.”

The Chair said, “So, what we will do is, we will ask to put this on the agenda for further discussion in-depth at our next meeting.”

Pettigrew said, “I would make one suggestion, and we didn’t have time to pull it together for this meeting. But, what is often done, and which helps keep things separated, is we’ll put the job descriptions perhaps in a different color, and that way you can quickly find them or see them if you like. Also, on organization, probably the Decision-Making of the Ethics Commission needs to go up before the Job Descriptions because it fits in there a little bit better. And, that’s just pulling together some different ideas that have been expressed by Commission members, trying to get them in writing, and if we need to adjust that, we can. Then I still think maybe Investigative Procedures, Grievance Management and Equal Employment/Affirmative Action need

to follow the Job Descriptions because those relate to employees. The other things relate to the Commission itself.

“So, in fact you could say this is in three sections, one – the Commission, two – Job Descriptions and three – Policies Pertaining to Employees.”

Hughes said, “You may want to put the Affirmative Action Plan as an attachment. It changes every year because the 2008 now has been approved, and that’s 2007 information.”

Pettigrew said, “Alright. We talked about that maybe needing to be done. I’m just astonished almost at how extensive the reports are that have to be turned in by our staff pertaining to Affirmative Action and other things that are required. And, I had thought maybe we could do a very simple form that we wouldn’t have to adjust every year. But, obviously, our Executive Director knows what is needed there, so we will adjust it.”

Hughes said, “We could update it with 2008 information with just a few things. But, it’s going to change every year with a change in staff.”

Pettigrew said, “Then, I think probably we need a footnote at the bottom. This is something that will change every year. That’s where we really need to talk about it some more, you and I.”

Hughes said, “Sure.”

The Chair said, “We will discuss this in depth at our next meeting. But, having read through this, particularly the definition of the job descriptions for our staff, I continue, after six years on this Commission, I continue to be absolutely amazed at the enormous amount of work and reports that are put together by a brutally overworked staff. I don’t know how they do it except with long hours and a lot of work. We’ll talk about this more at our next meeting. That does not require any action.”

Administrative Report

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

The Chair asked, “Before we go into a closed session, we are going to have a break, but before we do that, I would like to inquire of my brothers and sisters and the staff, ‘Would you be willing in lieu of going to Tulsa — Mick you might be interested in this because that is where

you work from, I know you work here — would you like to come to beautiful Ponca City for our next meeting? We could meet in the Commissioners’ meeting room. We met there some years ago, and the Mayor has invited us to do so and see some of Ponca City. It’s not that much farther than Tulsa. I extend that as an invitation if you want to come. Or, if you prefer to go to Tulsa, I won’t be offended. So, I’ll just leave it up to the other commissioners. Think about it, and we’ll talk about it after our ten-minute break which starts now. Thank you.”

Closed/Executive Session
For Consideration Of The
Confidential Matters Set
Forth On the Agenda

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

The Chair called for advice from the General Counsel on the lawfulness of the proposed executive session. Adams stated that matters set forth at Item 18 were made confidential by law. It was the advice of the General Counsel that the Commission go into executive session at that time for the limited purpose of considering those matters.

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

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

Open Session/
Action On Same

When completed, the “closed session” sign was removed, and observers returned to the room. The Chair called for a motion to go back into open session. Bingham so moved. Pettigrew seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously.

Loy moved that, with respect to IV-2006-012, no action was necessary, the matter being closed; that, with respect to IV-2007-008, staff should follow up and proceed as directed in executive session; that IU-2008-004 be continued; that IU-2008-006 be continued; and, with respect to IU-2008-007, that the Commission find an adequate basis and sufficient evidence for the belief that a violation of this Title, Section 257-20-1-4(a) may have occurred, that the respondent may have

committed the violation, that jurisdiction in which the violation occurred had been ascertained to be in Tulsa and/or Oklahoma County, Oklahoma; that an investigation of the information was warranted; and that the Commission open an investigation in the matter and direct staff as discussed in executive session and authorize the issuance of subpoenas.”

The Chair called for a second. Bingham so moved.

The Chair asked if there were any other questions about the motion that was pending. There were none.

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

New Business

Next on the agenda was new business. There was none.

The Chair announced the conclusion of the agenda items. He inquired, “Let me ask one more time about our meeting next month. What is the date now again?”

Hughes said, “It is set for November 14th.”

The Chair said, “The 14th?”

Hughes asked, “Didn’t you have a conflict with that?”

The Chair answered, “I don’t think so, but let me look. I have a conflict, but I can get a continuance. So, let’s do it on the 14th. Is that alright with everyone?” There were no other conflicts announced. He asked, “How do you all feel about meeting in either Tulsa or Ponca City? I invite you to Ponca City if you want to come. It’s a little farther than Tulsa but whatever you want to do...”

Bingham said, “I like Ponca City.”

The Chair said, “Jim, would you be willing to come?”

Loy said, “Hey, extra benefits.”

The Chair said, “I take that as a yes. OK. To those assembled here, we will meet in the Commissioner’s Meeting Room of the Ponca City Hall at 10:00 am on Friday, November 14. If anybody has any trouble finding it, let me know, and I’ll be happy to give you directions.”

Adjournment

The Chair 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 Bingham so moved. Pettigrew seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously.

The Chair then declared the meeting to stand adjourned.

MARILYN HUGHES, Executive Director

Approved On Behalf Of The Commission:

JOHN RALEY, Chair

MH/pb