

MINUTES OF PUBLIC HEARING AND REGULAR MEETING
Of The
ETHICS COMMISSION
STATE OF OKLAHOMA
Held
NOVEMBER 14, 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, November 14, 2008, at 10:00 o'clock a.m. Chairman John Raley ["Raley"] presided over the meeting which was held at the Ponca City Hall, Commissioners Hearing Room, 2nd Floor, 516 East Grand Avenue, Ponca City, Oklahoma.

Determination
of Quorum

Roll was called to determine the existence of a quorum for the transaction of business. Commissioners answering present were: Raley, Jim Loy ["Loy"], Don Bingham ["Bingham"] 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. Darcy Roberts, Investigator. Observing all or part of the meeting were: Louise Abercrombie, Business Editor, *Ponca City News*; Lee Slater, attorney; Amy Alden, House staff; Caroline Dennis, Senate staff; Jeff Packham, *Journal Record*; Dr. John Wood, Rose State College and Common Cause Oklahoma; Darci McKee and Cathy Welch, Campaign Technologies; Senator David Myers; H.J. Reed, lobbyist, ConocoPhillips; Representative Mike Reynolds; Michael McNutt, *The Oklahoman*; Sue Lunsford, Ponca City Chamber of Commerce; Bob Askew; Susan Harvis, Wendy Taylor and Jessica Lowe-Betts, Tulsa Metropolitan Chamber of Commerce; Dr. Robert and Linda Leshar, Chickasha; Dale Hicks, retired firefighter and C.D. Northcutt.

The Chairman said, "Good morning, ladies and gentlemen, and welcome to the State Ethics Commission and welcome to Ponca City.

“First of all, some introductions. I want to welcome everyone from out-of-town to Ponca City. We are very proud of this building. For those of you who have not been here before, it was built around 1910, and several years ago it was completely gutted and rebuilt. The room in which we are meeting today is the City Commissioners’ chambers, and the mayor was kind enough to allow us to use this meeting room for this purpose today.

“Since we have some people with us who have not been with us before, I’m going to take just a few moments to explain the purpose of the Ethics Commission and what we are going to be doing today. And, I have some very special guests I would like to introduce. The Ethics Commission was formed 18 or 19 years ago, and then, somewhat later, it was made a constitutional entity of the state government. We are tasked with the responsibility of formulating and publishing rules involving ethical behavior and conduct of all state employees—elected, appointed and hired—from the Governor on down.

“These rules are promulgated and submitted to the state Legislature at the beginning of each legislative session. The rules can be voted down by the Legislature, and the Governor in his wisdom and his good judgement can decide whether or not to veto the action of the Legislature. If the Legislature takes no action, then the rules that we promulgate will become law. The purpose of the meeting today in large measure will be to receive—from citizens groups, from individuals, from legislators, from lobbyists, or anyone that wants to speak—ideas and concerns that they have about pending rules. We have a fairly long agenda, and it has been my experience through the years that the most persuasive statements are the ones that are the shortest. I don’t want to cut anybody off, and we will not. But, if you will help us move through our agenda, we will appreciate it. Thank you.

First, I have a number of people that I would like to introduce. I would like to introduce the panel of Commissioners first. First of all, I would like to introduce Dr. Jo Pettigrew. Dr. Pettigrew is from the McLoud area. She is serving currently as Vice Chairman of the Ethics Commission. She has a long distinguished career in the field of education and government, and we are pleased to have Dr. Pettigrew with us today. Thank you, Jo. Next is my colleague, Mr. Don Bingham, who is with a very distinguished law firm in Tulsa. And, he is the immediate past chairman of the Ethics Commission and has been

serving for some three years, I believe. Mr. Bingham is the appointee of the Speaker of the House of Representatives. Dr. Pettigrew is the appointee of the Governor of Oklahoma.

“To my left is Mr. James Loy who is from Chickasha. He is the senior member of the Ethics Commission —on the board for a number of years —and served twice as its Chairman. Mrs. Marilyn Hughes is the Executive Director of the Ethics Commission and has been for a number of years and is generally regarded as the state expert on government ethics. And, she has served with great distinction to this Commission. Ms. Rebecca Adams is our General Counsel and is probably one of the most astute constitutional lawyers I’ve ever encountered, and we depend a great deal upon Rebecca Adams. Patti Bryant is our chief administrator and is the one who keeps the Ethics Commission functioning. I simply am amazed and astounded at how this lady performs the myriad of activities and jobs that she has, and we are very dependent upon her. Mr. Darey Roberts, to my extreme right, had a very long and distinguished career as a special agent with the Federal Bureau of Investigation. He is our chief investigator and auditor. When I say chief investigator, he is our only Investigator, and we depend a great deal upon Darey.

“At this time I would like to call upon the Senator who represents Ponca City and the surrounding area, my good friend, Senator Myers, who has taken time from a very heavy schedule to come and be with us this morning. Senator, would you extend greetings to this group?”

Senator David Myers [“Myers”] was recognized. He said, “Thank you, Mr. Chairman, commissioners. We are very glad to have you in Ponca City. Welcome to our great city and this great area. We are really proud of our facilities here. I’m sure the mayor will be here in a little bit to say a little more about the facilities that you are in. But, this is a great place for us in Ponca City, and we are very proud of it. I would say that the Ethics Commission may not be one of the favorite folks of the Legislature. It’s kind of like dentists. You know you need them, but you hate to go to their office. And, I’m sure that’s the same as the Ethics Commission. We sure hate to go to your office, especially when there are reprimands involved, but we do recognize that we need you and you’re a vital part of the state government.

“I would say that Chairman Raley is a personal friend of mine, and he does do some of my attorney work, but he never listens to me when it comes to ethics because every time he asks for my opinion, you guys do the opposite thing. So, it’s not any kind of influence there that I have been able to impose upon the Chairman. But, welcome to Ponca City. We have a lot of things that we are proud of, and we’d like for you to visit, and any time any one of you want to move to this area, I’d be glad to represent you in the State Senate. So, thank you for coming, and I hope you have a successful meeting. I apologize for leaving. I’ve got to go to Perry and present a check to the volunteer firemen for Noble County and then on to Grant County and back to Kay County today. So, I’ve got a big trip ahead of me. Thank you for coming.”

The Chairman answered, “Thank you, Senator, for taking time from your very busy schedule. I might add that, from time to time, occasionally I substitute as a Sunday School teacher for the Senator’s Sunday School class. I’d like to declare publicly that I am not at all responsible for his behavior. We’ve had a long and very friendly relationship. We’ve had some very interesting conversations—all of them civil and collegial.

“I also see Representative Mike Reynolds is present who is with us at virtually every meeting, and I know we’ll be hearing from Representative Reynolds later on. Mike, welcome to Ponca City.

“There is a very special lady that I would like to introduce to this group and particularly to the panel. She could easily be called the founding mother of the Ethics Commission. And, I am referring to my good friend, Louise Abercrombie, who is with us today. Sometime in the mid eighties, Governor George Nigh appointed Ms. Abercrombie to the committee which formulated what was to become eventually the Ethics Commission. So, she is actually one of the founders of the Ethics Commission. See what you have wrought, Louise. We are delighted to have Louise. Please stand and be recognized. Louise is the Business Editor and reporter for the *Ponca City News* and a good friend.

“And, I see also my very distinguished and very senior partner, Colonel C.D. Northcutt. C.D., thank you very much for coming and giving us your support here today.

“And, [I see also] a good friend of many years, Bob Askew, who is my alter ego and makes up for my physical disabilities and takes care of me from time to time when I go astray.

“Alright, have I missed anyone that should be recognized? Of course, we have Mr. H.J. Reed who is with us from time to time. It’s always good to see you, H.J. Please let me know the next time you’re in Ponca City, and we’ll have lunch, and I’ll pay for it.

“There will be others recognized as we move along, and I know that we have some visitors from Tulsa and elsewhere, and you are most welcome, and we want to hear from you.”

Commissioner Loy was recognized. He said, “I just have two guests from Chickasha. The people in Chickasha know I’ve been coming to this meeting for a long time, but they’ve never been sure I ever have been there, and they sent two witnesses today, Dr. Robert Leshner and his wife Linda who is an R.N. In addition to being an orthopedic surgeon, Dr. Leshner is also a former Navy medical officer and Captain. So, we’ll give him special treatment. I do thank them for coming today.”

The Chairman said, “Welcome folks. We are delighted to have you with us today.”

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 November 14, 2008 Regular Meeting of the Ethics Commission*, incorporated by reference in this agenda as fully set forth in the document.

The Chairman noted that the next item on the agenda had to do with pending rules that were under consideration by the Commission. “A short word of explanation. What we would like to do today is glean from you who have driven a long way to be with us —some of you have —the reaction that you have, concerns, support for, or concerns about

any of the pending rule [amendments]. These [amendments] will not be voted on today. Under our procedure, through the year each month we set aside a particular time during our agenda to discuss pending rule [amendments]. As we get closer to the end of the year, there are more rule [amendments], of course, for us to consider. Rule [amendments] can be proposed by individuals, by civic groups, by lobbyists, by members of the Legislature or individual citizens. And, we publish those [proposals].

“The rule [amendments] cannot be voted on eventually unless there is a sponsor of each individual rule [amendment] by a member of the Commission. The rule [amendments] are voted on the first month of the year. So in January of next year, we will vote on whether to submit these rule [amendments] to the Legislature for its consideration. The purpose of this agenda item this morning, however, is to receive from you your thoughts and your concerns about each of these rule [amendments]. We have talked about these rule [amendments] over the months, and I’ m not going to take time today to go through and explain each individual [amendment]. You have a copy of them, and there is a short explanation of each [amendment]. But, I would like to take them one at a time and ask if there is anyone who has any statement that they would like to make.

“The first proposal, Rule Amendment #1, was proposed by Mr. H.J. Reed [“Reed”] and Mr. Lee Slater [“Slater”]. I should have introduced Mr. Lee Slater. Mr. Slater is a prominent attorney in Oklahoma City, and his practice in some areas has to do with the laws of ethics, and Mr. Slater is kind enough to be with us at almost every meeting. H.J., do you or Mr. Slater have anything that you’ d like to say about that? And, please, approach the podium. And, for the record, please announce your name so we will have that recorded, please.”

Rule Amendment #1

Reed said, “Thank you Mr. Chairman.. My name is H.J. Reed, and I’ m with ConocoPhillips. And, we have no further comments on proposed Rule Amendment #1 at this time.”

The Chairman said, “Thank you sir. Does anyone else have any comments about Rule Amendment #1? Rule Amendment #1 provides for what we would call a safe harbor or a good faith effort to make records or make [an effort to obtain a contributor statement] by a campaign committee, and failure to do so is technically a violation of

the rule. This rule [amendment] would provide some excuse or provide a safe harbor for failure to do so timely.

Rule Amendment #2

Rule Amendment #2 is self explanatory, but essentially it would require—in the reporting of expenditures for campaigns, it would require—a good judgment account so that a reasonable person could understand what the expenditure was for and who made the expenditure and to whom the expenditure was paid. It has been our experience over the last year or so that many times this report has just used generic terms without any specificity, and a reasonable person could not tell what the expense was for. And, in an effort to have complete accountability and transparency, some of us thought this rule should be enacted. Does anyone care to speak about this rule?”

Dr. John Wood [“Wood”] was recognized. He said, “I am Dr. John Wood from Rose State College and Common Cause Oklahoma Board. Just briefly, the purpose of the existing rule regarding campaign expenditure disclosures is to prevent self dealing and other corruption. Since people donate that, and it is strictly for campaign purposes, a lot of money goes to the campaign, and the temptation is to pass some of that along to the candidate’s brother-in-law or so-and-so-forth. Right now a consultant can pay a candidate’s relative a lot of money to do nothing, and it wouldn’t show up on the reports. It is a matter of openness and dealing honestly with other people’s money. And so, really, the more the campaign discloses, the better. Itemization of expenditures is important to determine intent—at least to be able to trace items.”

The Chairman asked, “Does anyone have any questions?”

Bingham was recognized. He said, “You mentioned a scenario. I don’t know. I don’t want people to, first of all, think that this is some huge problem that we are trying to address. It might occur. I just don’t know that it is something that is going to come up very often. But, paying a consultant with your hypothetical, and the consultant distributes the money to people for make-work jobs or like ghost employees, and so forth. But, under this proposed rule, we would be able to identify the consultant who was paying the amount. Does the rule reach, then, expenditures by the consultant?”

Wood asked, “What the consultant does?”

Bingham said, "Yes."

Wood answered, "I don't have the full thing in front of me, but I have the brief paragraph."

Bingham said, "Well, we'll look at that. But, I doubt that it does, and so, what I'm saying is, just the scenario that I was hearing you propose, the consultant would still be able to dole out the cash to whomever, and there wouldn't be any transparency. We know the consultant got the money, but there would be no way that I know of to force them to reveal that."

Wood said, "I think it should be itemized so at least we know to break it down a little more so it's not just that we give it to a consultant or we give it away. It's a little more, 'What was the intent?' So, once you go back and do some research on this, you can say, oh, well, maybe the intent was this. This gives people more information out there."

Bingham answered, "I'm certainly not being critical of the thrust of your proposed rule because some of the descriptions that we get of who received this money are pretty darn vague and not helpful at all."

Wood said, "It just seems that the more information, the better."

Bingham commented, "Finally, and I will address this to anybody who knows the answer, what is the federal law or rule for how specific the identification of recipients must be from a campaign?"

Hughes was recognized. She answered, "There are 24 states and the federal government that do require this disclosure of who received the expenditure—the name and address of who received it and the description. I would like to also point out that in 257:10-1-7(a)(4), we already require—it says that—'an expenditure may not be made, other than for overhead or normal operating expenses, by an agent, independent contractor, or advertising agency, on behalf of or for the benefit of a committee unless the expenditure is reported by the committee as if the expenditure were made directly by the committee.' So, checks made by a consultant would have to reported in the same way that checks that came directly from the committee would have to be reported—by name and address—if this amendment were passed."

Bingham responded, "Okay."

Pettigrew was recognized. She said, "Given the fact that we have been very limited on the FTEs that we are responsible for and are allowed to hire, I would like to express my concern this is another duty that might be very time consuming for our staff."

The Chairman said, "Thank you, Dr. Pettigrew."

Hughes responded, "It is also a difficult task for the staff to audit reports when we don't have this information. It's almost impossible to know where money has gone because the report doesn't require enough for us to know. So, really, in the long run it makes our life easier than harder."

The Chairman asked, "Are there any other comments or questions about this rule?" There were none.

Rule Amendment #3

The Chairman noted, "There is no sponsor as yet [for Rule Amendment #3], and it places a two-year contribution limit for individuals of \$50,000 on contributions to candidates or the authorized committee. Does anyone have any comments or questions about Rule Amendment #3? As I say, at this time it has no sponsor."

Pettigrew answered, "Mr. Chairman, can you remind me where this rule came from, how it was developed or by whom it was requested?"

Hughes answered, "It was submitted to my office by Senate staff members last year. It was carried over to this year, so it was tabled. But, originally, it was submitted by Senate staff—or I'd be more accurate to say a Senate contractor—on the Senate's staff."

Pettigrew asked, "Do we know if that staff person or contractor or Senator is still interested in this amendment or was this something that was just for last year?"

Hughes answered, "That, I'm not sure of."

The Chairman said, "This was just a carryover from last year. We have no sponsor for it. Any one of us can sponsor it if you see fit to do so or amend it in any way."

Rule Amendment #4

The Chairman reported, "Rule Amendment #4 has no sponsor as of yet. It was submitted by a prominent law firm in Tulsa, and we have had already quite a bit of discussion about this rule. Is there anyone here today that would like to extend that discussion of this proposed rule [amendment]? This would allow corporate entities to twice annually solicit campaign contributions from individual employees of that corporation."

Bingham responded, "Mr. Chairman, if I may, I, again, something that I probably say too often. But, if folks are interested in one of these proposed rules, you favor it, you oppose it, you would like to see it enacted if it were modified, you are welcome to make public comments. We consider that very healthy, and obviously, we offer the public the opportunity to do that. But, you are also welcome to contact us privately. Tell us what you think. You can send us an email. You can pick up the phone and call us. We will consider your thoughts and inputs. I'm not going to examine somebody's motives why they call me or email me rather than why they didn't stand up in public. We are going to listen to what you have to say regardless and evaluate it on the merits and listen carefully to you. So, if anyone isn't comfortable about taking a public position on something, but they feel that they could help us understand what is and isn't a good idea, give us a call, email us or whatever."

The Chairman responded, "Thank you."

Loy was recognized. He said, "I'd like to second Commissioner Pettigrew's comments at, I think, the last meeting in that this seems to place additional pressure on employees. If they want to make a voluntary contribution, fine. But when your boss asks you to make a contribution, it turns into a different form. I don't think the amendment has a sponsor at this time. But, at this point, I would be opposed to it."

The Chairman said, "Thank you. As announced earlier, we will not be voting on any of these rules today. We will vote on them at our meeting in January. And, the purpose of this meeting is simply to receive from members of the community or individuals or representatives of special interest groups ideas and concerns about these individual rules. We discussed this particular rule at some length I think a couple of months ago."

Rule Amendment #5

The Chairman noted, “Rule Amendment #5 does have a sponsor. I am sponsoring this rule. It has to do with the solicitations for charitable organizations. We’ve had quite a bit of discussion on this proposed rule before. Does anybody have anything that they would like to say either for or against this proposed rule at this time? This is the time for us to receive information from you.”

Rule Amendment #6

The Chairman announced, “The next rule is the so-called ‘gift list’ or alternatively ‘no gift list’. At this present time, it has no sponsor. But, essentially, it would create a published list of members of the Legislature who do not desire to receive gifts from anyone and also, presumably, a list of those who would be willing to receive gifts. This was proposed by a citizen, I think, a member of Common Cause. Did he not propose this? We’ve discussed it briefly at the last couple of meetings. Does anyone have any comment or question about this rule?”

Wood was recognized. He said, “I don’t have a whole lot to say about this. I’ve already spoken about it before. And, if you guys do not go for Rule Amendment #9, which I will speak about more extensively, then I would say the next step would be Rule Amendment #6. Rule Amendment #9 is banning gifts. If you don’t accept that, then at least a gifts or no gifts list would put people’s names in public whether it is a no gifts list—which was in a bill by Jason Murphey to promote that in the House and Senate. But, the gifts list would be if you want to accept gifts, which is a little more stringent. “You’d be on that list. That’s all.”

The Chairman said, “Thank you for your comments, sir.”

Pettigrew was recognized. She inquired, “I would like to ask staff again about how much additional work it would be to do this. I think it’s important that, whatever we consider, we take into consideration our staff’s time and ability.”

Hughes said, “I don’t believe it would be a significant amount of additional work. We have now the management system for our website, and we would just maintain a list on our website and add to it or subtract from it as legislators wanted, but it would not be significant.”

The Chairman said, “Thank you.”

Rule Amendments #7 and
#8

The Chairman announced, “Rule Amendments #7 and #8 have been proposed and are sponsored by Dr. Pettigrew. And, I think Mr. Slater has a comment.”

Slater was recognized. He said, “Mr. Chairman, my name is Lee Slater. I have a proposed amendment for Rule Amendment #8, which I promised at the last meeting. If the packet is still numbered the way it went out on the internet the other day, the amendment would be on page 26 or your packet. And, it would basically replace the last sentence of the section on page 26 —the underlined language there, I should say. And, if I may, Mr. Chairman, what I’d like to do is just tell you what my amendment is supposed to do and then if there are questions about the exact language, I’d be happy to address those.

“It is intended to address a situation where a lobbyist principal has more than one registered lobbyist. In that case, only one of those lobbyists would report things of value given to state officers and employees. The other lobbyists employed by that lobbyist principal on their reports would make reference to the fact that the first lobbyist was reporting all of the things of value given on behalf of that lobbyist principal. That would enable the public to go to one report to see the things of value given by any lobbyist principal. It would also make it much easier for the lobbyist in my judgement.

“If a lobbyist principal has five lobbyists, and one of them is designated by the lobbyist principal to do the reporting, then the other lobbyists could funnel all of their information, and it would be reported through that person. I believe the lobbyists would appreciate this amendment. I believe that it would make it much easier for the public to have the kind of transparency in determining the expenditures by a lobbyist principal or on behalf of a lobbyist principal than having multiple lobbyists file reports. That’s the intent of the amendment. The language I think does that.

“The second sentence is a bit awkward. It takes a little following, but that, Mr. Chairman, is the explanation. And I offer that for consideration by the Commission.”

The Chairman said, “Mr. Slater, would you yield for some questions? Does anyone have any questions?”

Hughes stated, “We have lobbyists who do all reporting through one lobbyist, and that’s no problem. But, we also have lobbyist principals who every one of their lobbyists report their expenditures. And, of course, with the electronic filing system, you can look up –say its OGE –you can look up OGE and see all of their expenditures. But, this would force every lobbyist principal to do it the same way. So, there would be only one lobbyist.”

Slater said, “That’s correct. That’s what they want.”

Hughes asked, “That’s what everybody wants?”

Slater said, “I can’t say that everybody wants that. But, all of them that I know would like this.”

Hughes said, “Okay.”

Slater asked, “Do you know others who don’t?”

Hughes answered, “I don’t. I just know that...”

Slater interrupted, “The ones that I work with would like this rule.”

Hughes said, “Okay.”

The Chairman asked, “Would it be fair to say that the lobbyist community favors this amendment?”

Slater answered, “I can’t speak for the whole lobbyist community, but the lobbyists I know, I believe, they would prefer this rule.”

The Chairman asked, “Are there any other questions of Mr. Slater?”

Hughes asked, “Do you think that the way this original rule was written would prohibit doing it the way you have proposed?”

Slater answered, “My concern with the way that the original rule is written is the language. It appears it doesn’t make reference to the reports, per se. But, it makes the reporting lobbyist, or presumably

the reporting lobbyists, liable for third parties. If you will read the language, it has a whole string of things that he or she is responsible for reporting. I think those are contained in the reporting language in other places in this section so that, if the report changes —if you have this language —you don't have to come through and change this language again. Commissioner Pettigrew is trying to clean up some language, and I think you don't want to clutter up for the future language so that at some point in the future, it will have to be cleaned up. If you'll look, for example,..."

Hughes interrupted, "I know what you mean."

Pettigrew said, "Mr. Chairman, if you will remember, we did ask Mr. Slater at either the last meeting or the one before, and he volunteered graciously to work on alternative language. And, I must say I certainly appreciate that. I will be sponsoring this rule, and if the other commissioners agree, I am quite willing to substitute his language for what's here."

The Chairman said, "Mr. Slater, as you and I both know, and all of us know —irrespective of the merits or demerits of any proposed rule —any time there is an administrative change, we have to look at what impact, if any, upon our staff, which we all recognize is overworked. And so, we will be taking that into consideration."

Slater responded, "It should make it easier, Mr. Chairman."

The Chairman responded, "I sincerely hope so. We will be consulting with the staff who will give us an appraisal of how this would impact upon their job. You were talking about Rule Amendment #8. Would you care to comment about the other rule sponsored by Dr. Pettigrew?"

Pettigrew answered, "The other rule I have asked for is Rule Amendment #7 which is, again, a clean-up by removing the language that was repetitive in two different areas of law altogether, and that's why it looks like new language that is underlined in the section (2), but it's simply taking what was on another page over and putting it together. And, that part has, as you can see, been struck or eliminated out of 257:1-1-6, and it's all in 257:1-1-1. It is simply pushing together some of the things —not changing it but pushing it together where we have wording saying the same thing."

The Chairman said, “Thank you, Commissioner Pettigrew. For those of you who may not have been here before, Dr. Pettigrew has done a monumental job of going through many of our rules and has submitted suggestions on how we could clean up the language and avoid ambiguities and make it more understandable. And, she has done a wonderful job, and we are most appreciative to her for this.

Rule Amendment #9

The Chairman explained, “Rule Amendment #9 would prohibit state officers, elected and appointed, [from receiving] things of value. A little preface to our discussion... I know there are a number of people that want to talk on the merits or demerits of this rule. In the interest of saving time, may I see the hands of those who would like to speak on this rule? Anyone? How many do we have. Alright. That’s fine. We’ll be able to handle that. This rule, or variations of this rule, have been under consideration by this Commission for several years. And, without getting into the background of that, let me simply say that we have discussed it ad nauseam for months—not this particular rule, but kindred rules. It is a very important proposed rule, irrespective of whether you agree or disagree.

“It would present a fairly radical change, of course, in the way that business is done at the State Capitol. And, for that reason we must not take it lightly. There are all kinds of arguments that could be employed for or against this rule. We will not be voting on it today. As a matter of fact, the Commission will probably not be debating it today, except we will ask for comments from members of the Commission. We will vote on this in January, and with that caveat in mind, I will now call upon who would like to speak first to this rule.”

Susan Harris [“Harris”] was recognized. Harris said, “I am Susan Harris with the Tulsa Metropolitan Chamber. The Tulsa Chamber leads a regional coalition of cities, county governments, municipalities, and area chambers, so it is kind of a diverse group. We develop each year a one-voice agenda of legislative issues that will impact our part of the state—that is multiple counties, it is multiple communities all the way to Bartlesville, down to Muskogee, up to Miami and Sapulpa—all of those areas. So it’s broad.

“I would like to ask you to put yourself in the position of people who do not do business in the State Capitol. When we need to speak to our legislators about an issue that is important to our region and educate them about the impact of a particular piece of legislation, our

opportunities to speak with them are on Thursday evening or Fridays. As you all know, the vast majority of our legislators have jobs or businesses. So, when they come home to their districts, not only do they need to do the kinds of things that a good legislator does in terms of keeping in touch with the people in their district, they also often have to go to work.

“That means that the convenient time for us to communicate about these issues, about pending legislation typically is Thursday evenings, after they get to the Tulsa area, or on Fridays. And, the best time is over a meal —breakfast, lunch or early Thursday evening. If this rule goes into place, as we read it, then we would be prohibited from having things like our legislative breakfasts. We do three a year —one early in the session where we let legislators talk to our coalition members, chamber board members, etc. about what’s pending in the Legislature; mid-session, you know what’s still out there, what’s happening, where are we going; and then a wrap-up at the end of the year. These are events where we keep in touch with legislators. It’s relationship building, it’s communication, it’s education.

“We also invite all members of the Legislature to these kinds of events. We do have a couple of receptions —one in Tulsa in January and one with Oklahoma City later in the session in the city. Then we invite them to our congressional forums when we have Senator Coburn and Inhofe in or any of the congressional members —Sullivan, Fallin, Lucas, Cole and Boren. And, many of them come. There happens to be one legislator —and I know what you are concerned about is that this gift of value might inherently be buying a vote, and I’m not going to name a name —but there happens to be a very conservative legislator at Broken Arrow who comes to all the Chamber events. He never votes with us. So clearly, the rubber Chamber chicken that he gets or the rubber scrambled eggs he gets from us has not impacted his vote because he does not support us. He comes to meet people, etc.

“This rule would put our community at a huge disadvantage because then we would only be able to meet with legislators during business hours or late in the evening. And, the chances of us getting access to them at those hours is slim to none. I can’t very well invite people over the lunch hour. Of course, they’ll take lunch invitations from us because they have to eat lunch, and so it doesn’t impact their work hours. But, they are not going to come and meet with us from 12:00 to 1:00 and not eat. And, by that same token, the Chamber

board members aren't very happy about having to come and not getting to eat.

“We think the \$100 rule is certainly limiting it to such a small amount that surely no reasonable person would assume that we are buying votes. You've only had that in place for six months, which means we really haven't been through a full session with it. We'd like to see you give it a chance to see how it works and see if that meets the needs that you are trying to address. But, then also, keep in mind the needs of those of us who are not in Oklahoma City on a regular basis—on a daily basis—and the fact that we need to be able to have access to our legislators. That that's part of what makes the system work. We feel like we provide valuable services to the Legislature when we are able to meet with them and share with them our concerns and let them talk with people who are directly affected by legislation. By restricting us in this way, you would, in effect, cut off our contact with them. And, we appreciate the time. Thank you .

The Chairman said, “Thank you so much for coming. We are grateful that you've come all the way from Tulsa, and your comments are well received. Let me say in a brief response to your remarks—and I do not disagree with anything that you said—this panel is very much aware of the profound good that chambers of commerce throughout the state do for the betterment of life here in Oklahoma. We don't want to do anything to curtail or jeopardize the fine work of the chambers of commerce. The rule as it is stated—I call it a zero limit because that is exactly what it is—there have been some half a dozen or more rules of this type throughout the country, and we've asked our staff to provide us a list of states that have similar rules for guidance on this perplexing matter.

“A recent article in the media talked about a rule in Minnesota. We have a copy of that rule, and I was studying it the other day. Frankly, I haven't had a chance to tell my fellow commissioners. I placed a call to the Executive Director of our counterpart in Minnesota. I have not talked to that individual yet—but I left my name, and I'm sure I'll get a response. There are a number of questions that I want to ask about that Minnesota rule. And the Minnesota rule, as I understand it and I read it, would make an exception for items that you speak of—food.

“Depending somewhat upon the conversation that I have with this individual—which I will share with my fellow commissioners—I may very well offer an alternative to this zero limit rule that would be distributed to the Commission, and we may discuss it at next month’s meeting—I’m not sure that I will, but, I’m thinking along that line—that would incorporate many of the things that you’ve talked about. Now, not wanting to get into depth on this as far as what potentially would be submitted, I want to wait and do some more study, and my fellow commissioners will want to study it some more because it could require a radical change of course.”

Hughes said, “I’d like to point out—as was pointed out to me in a seminar that I did—that we have an exception to the definition of anything of value that allows an exception for food and beverage consumed on the occasion when participating in a charitable, civic or community event. And—as was pointed out to me—the chambers of commerce are considered civic organizations and could possibly fall under that exception.”

The Chairman said, “In other words the definition of things of value can be extended, expanded, deleted and that would be the heart of this rule to define what things of value actually consist of. So, we’re not ready to vote on this one yet. But, we will take to heart the comments that you’ve made, and we appreciate you coming.”

Dr. Wood was recognized. He said, “I was actually asked to come explain this because I offered this amendment, and I wasn’t able to make it last month. I was out-of-state. But, a couple of things were brought up. There are some states that do have strong bans—Minnesota, North Carolina, North Dakota, South Dakota, Pennsylvania, Wisconsin and New York. Is this going to make it easier or harder on the Commission? I really think it’s going to be easier.

“If you do look at the rule, most of it is actually cut. We actually cut much of the current rule. Another thing is exceptions. There are actually 21 exceptions that would remain. That’s all of the exceptions. Some of the exceptions are plaques—\$200 for plaques. If you look at 257:1-1-2 [definition of ‘anything of value’], there are 21 exceptions. There are plaques, there is a nominal value that was mentioned by Commissioner Pettigrew months ago about a pen. If it is of nominal value what people give you, \$10 or less, then that’s an exception. Transportation is an exception. If you look at all the states,

they all have exceptions that are basically modified for that state and modified for those needs. So, I wouldn't be adverse at all to some added exceptions if they made sense. But, I have six basic reasons why I think we should ban gifts.

“Number one, banning gifts tends to ensure that the Oklahoma state legislators and other statewide officials serve the public interest, and not special interests.

“Number two, lobbying is an extension of a business practice for Oklahoma's 700 lobbyist principals. Giving gifts is the cost of doing business. Giving gifts is a part of the “quid pro quo” of doing business, or to “give something for something”. Lobbyists and those they represent would not spend money on gifts and food if it didn't work. If bottom-line conscious businesses give money to a legislator or statewide office holder through a lobbyist, there is an expectation to gain either access or favorable legislation. Not surprising, expectations are on the rise, as spending on gifts to Oklahoma legislators has increased 28% in the past year.

“Number three, poll after poll finds that more than 75% of Americans want to reduce the influence lobbyists have on legislative decisions because the acceptance of personal gifts from those who lobby, even lawfully, may give rise to legitimate concerns about favoritism — depending on the circumstances. Corruption, even perceived, makes citizens lose confidence and become cynical about the government. Ideally, public officials who hold administrative positions are acting impartially in the public interest. However, they do, in reality, respond to political pressures and money.

“Number four, citizen lobbyists and constituents do not have a budget to lobby their state legislators or officeholders. Constituents can't afford to buy lunches for everyone. A constituent should have equal access. Constituents have always been disadvantaged in this process. So, I know and I think the Chamber is important, but constituents don't have the ability to pay that type of money. If you look at the average lobbyist employee, if you say \$100 times 149 legislators is \$14,900 you could spend on gifts alone — this doesn't count contributions and stuff — that's a lot of money. The average Oklahoman only earns \$30,000. It's impossible to compete with lobbyist employers who have a big budget and who really want to spend a lot of money.

“Number five, term limits increase lobbyists’ relative power compared to less experienced legislators. We have passed the term limit rule in the state. Oklahoma falls in the category of dominant/complementary, which is the category where lobbyists exhibit the second most powerful tier of influence in the United States and where lobbyists have a great deal of power over term-limited legislators. Since legislators have only 12 years in office, few have an institutional memory for understanding the complexities of the office, and I just do want to say that I think lobbyists play a central role when it comes to government. They have a lot of information — important information. But, couple that with money, yes, it’s not surprising that legislators listen to lobbyists over constituents’ concerns and are likely biased.

“So, my point there is it’s great that we have lobbyists, and it’s great that they have a wealth of information. And, I think we would struggle in government if it weren’t for lobbyist information.”

The Chairman said, “May I interrupt for just a second, sir? And, please forgive me. I notice you are reading from a document.”

Wood said, “I have one more point to make.”

The Chairman asked, “Would you be kind enough to make that available so we can duplicate it and present that document to all members of the Commission? You’ve given us a lot to think about in a very short period of time. I’m not sure I captured it all. Go right ahead and finish. But, if you would make that document available to us, we’d certainly appreciate it.”

Wood said, “It’s just more of a speech. I don’t have all of the references and things, but I can get those for you, too. Okay.

“Number six, should we let the best ideas win over money when it comes to talking with our lawmakers? When a constituent goes to his or her legislator, should not the legislator or state-wide officeholder listen to the constituent? Should money make a difference in how a legislator makes a decision? Whether real or perceived, that decision is tainted in the mind of the public if money is involved in any way.

“As Oklahomans, we are tired of corruption and compromised logic when it comes to dealing with problems. Let’s work toward ethics that give confidence to constituents in the state that our lawmakers are not influenced by lobbyists’ money. Let the marketplace of ideas prevail, not

the bias of favoritism lined with gifts and money. So, that's all I have for now.

“Again, if you are worried about exceptions, there is a whole list of exceptions, and there are things that maybe you can add when it comes to lunches. Some states actually have exceptions if you have lunches like the Chamber has, but it's for everybody. If the whole Legislature is invited, that's an exception — instead of just one legislator. And, there are exceptions for plaques. There are exceptions for food. There are exceptions for transportation if it's for a public reason. So, it's not like we are going to ban gifts, and you can't even leave a pen there. There is a nominal value exception as well. So, I think it is a good rule, and I think it is good for Oklahomans to gain confidence in our state legislature.”

The Chairman said, “Thank you. You have given us some very fine ideas, and we need to consider all of those. And, you'll make that document available. Commissioner Loy, I think, has a question for you.”

Loy said, “It's not a question — just a statement. Dr. Wood, I appreciate you being here and both of these points of view. The thing that is interesting to me is, Mr. McNutt had an article in the *Daily Oklahoman* suggesting that people email our director with their thoughts concerning this rule. And, as a result, we have had 25 or 30 people make very good responses, and all were totally in favor of the amendment. The *Tulsa World* and the *Daily Oklahoman* both came out with editorials and the *Tulsa World* seemed to approve this. It was more approval than disapproval, and the *Daily Oklahoman* suggested that we needed to wait perhaps a year. So, there is interest in this. But, we really need public comment. The majority isn't always right, we know, but they do have a say, and we want to hear what they have to say.”

The Chairman said, “Thank you, Commissioner Loy. Do any other commissioners have any comment at this time for this gentleman before we leave it? Thank you sir very much for coming.

“Let me make a statement. I want to speak only as an individual Commissioner and not as Chairman. We will be debating this among ourselves during the next couple of months and will vote on this in January. I, too, have read the editorials. I, too, have read the emails. I, too, have read all of the other communications that have been sent our way. I am persuaded by much of what I read. I am very much persuaded by the presentation of this nice lady who came all the way from Tulsa.

“A zero limit, I think, would probably — and by zero I mean absolutely zero — I’m speaking as an individual, please — I think would probably be unworkable. I think there needs to be some exceptions. Where do we draw a line on those exceptions? And, that’s what is going to be consuming a great deal of our time and energy.

“One matter came up, and I don’t know whether it was an editorial or whether it was some statement that came to me, but I recall a statement made a few years ago. Mr. Slater thinks that I probably do not pay much attention to what he says. I pay a great deal of attention to what he says, and Mr. Slater made a statement in a meeting a couple of years ago that if we tighten this up too much — and that’s not the expression he used but that’s the implication — that it would force people to go underground and exchange things under the table. That’s an unwholesome thought, and that’s a troubling thought.

“I am a pragmatist as well as an idealist, and I believe that sometimes that happens more than not. What is very much apparent to us is our concern for transparency and full accountability. If we say absolutely zero, then we don’t have to keep records. And, if anybody goes under the table and accepts something, then the giver and the recipient will have to suffer the consequences if it is discovered. So, that is one concern.

“Commissioner Pettigrew and I have discussed this a couple of times. One concern that I have is that if we tighten it too much, it’s going to go under the table, it’s going to go underground, and we destroy the very thing that we are trying to achieve, and that is accountability. I philosophically favor the notion that has been expressed in this rule. I personally do. I see no good that can come of someone presenting a thing of value to a person who is allocating tax dollars or writing or drafting the rules of this state. On the other hand, there are exceptions. And this nice lady presented several of them to us. That’s my personal view.

“Commissioner Loy, I don’t speak for the Commission on that. But I do have that one concern, and that is if we restrict it too much, then we are going to force some under the table and that would lose our accountability. Anyone else on the Commission have a comment they want to make on this rule before we move on?” There were no other comments.

The Chairman said, “Rule number #10 does not have a sponsor, and it would require us — the Commission, that is — to make public the

name of anyone whose file is sent to a prosecutorial authority for possible criminal prosecution. And, this was submitted by a member of the media. Does anyone have any comment or care to make any statement concerning that?"

Jeff Packham ["Packham"] was recognized. He stated, "I am the legislative services coordinator for the *Journal Record*. And, I have asked for this rule. It seemed to us that some of this information may come out as a public reprimand at the end of the process. We're just trying to get some of that information earlier. We are asking for the respondent's name and the allegations."

The Chairman asked, "Does anyone have any comment?"

Pettigrew said, "Mr. Chairman, I just have several questions on what it means. Can you help me, Jeff?"

Packham answered, "Certainly."

Pettigrew said, "In the very next part after 'prior notice and an opportunity to be heard, issuing a private reprimand to a Respondent one time only for an inadvertent violation.' The one time only is new language you put in, and would you explain to me what that means and why you want to limit it to one time only?"

Packham said, "It is my understanding that that has been the policy of the Commission but hasn't been in the rules. So, that is something we talked about — just making the policy an actual rule on that particular part."

Pettigrew said, "So, this means then — and maybe I see that our director is shaking her head — that we are only going to do this for an individual one time. Is that what you are saying?"

Hughes said, "On the private reprimands, the Commission has taken the position in the past that they only issue a private reprimand once."

Pettigrew asked, "Is that once for the same offense or for different offenses?"

Hughes answered, "Different offenses."

Pettigrew responded, "...just one time you get the private. My next question, over on section (b), the Commission actions and records open for public inspection — this is all new language. I think this means that if we turn over something that we have been discussing to another entity, like the OSBI, does this mean that everything that we have gathered to that point will now be public record?"

Packham explained, "All of the investigative information will remain closed off to the public."

Pettigrew asked, "What would become public?"

Packham answered, "All we are asking for is the Respondent's name and the allegations made. It would be similar to what you might find if there is a complaint filed in court. You get the document that tells the Respondent and whoever is making the complaint — and then the allegations."

Pettigrew said, "This would be, say, Senator Joe Smith has been found to be in violation on the rule concerning limitation of contributions or something. Is that what you are saying would be turned over basically?"

Packham said, "Yes."

Pettigrew asked, "But not the details? You see, I'm concerned that if you turn over too much, you have hampered your case."

Packham said, "I have been working with Marilyn."

Hughes said, "An allegation is not an absolute finding. An allegation says that you allege that this has occurred. And, the two instances where the information on allegations and name would be turned over would be 1) when you send it to a District Court for prosecution, or 2) when you refer it to another prosecuting authority. And, that would be the only two cases."

Pettigrew said, "And, in this statement you would name who you are turning it over to, the other entity?"

Hughes said, "Yes."

Pettigrew said, "I know you've worked with him, and I appreciate that. I know you've worked a lot with him, and I just needed some clarification. Thank you."

The Chairman asked, "Does anyone else care to ask a question?"

Bingham said, "I just have a comment, and I'm glad we're going to have another meeting. But, I don't know that I want a rule tying our hands to one private reprimand only. If that's kind of an informal policy that we've adopted, then I think that continues to be sound. I'm not questioning that. But, if we have a rule, we have no discretion in that second instance — and I don't know why we would by rule tie our hands like that.

"Second, it's one thing to me that if we, if there was a matter investigated by the Commission and it becomes a matter of public prosecution in District Court, then obviously there are going to be allegations, and the names are going to be made public. But, I'm not at all persuaded that merely because we refer a matter that comes before us to a prosecuting authority, that somehow then we should release the name and the accusations. Again, this is just a matter under investigation, and it's still extremely sensitive. Wouldn't that force us that if we sent that to the Attorney General or to the FBI or something, we would have to release — under this rule — release the name of the person that we referred and the allegations?"

Packham said, "That is correct. I think at that point I feel like the commissioners as a whole have made a decision that this is something that has some merit as needing to be further investigated by a different body. And, I feel like that is significant enough to merit putting that information out there — that there at least is something to this that is worth investigating further."

Bingham said, "That's where I probably disagree with you because our referring a matter before us to a law enforcement agency for further consideration is not a finding of probable cause that they violated the rules or any law. And, second, we might — and I can't tell you that we do or we don't because we don't disclose these things — but we might refer it to a different agency for investigation because we just don't have — we don't know if the person is guilty or innocent. But, we just don't have the resources to investigate it. And, that may be the only reason for referral.

“To say that our decision to refer for anything short of a decision by a prosecutor perceived in a public forum, there are all kinds of reasons why we refer, and they remain very sensitive at that point because the investigation may disclose that the subject of the investigation hasn’t done anything wrong — hasn’t violated the rules, hasn’t violated the law or anything else. So, I have some serious concerns about that, and I’m glad we’re going to have another meeting on it. We appreciate your input.”

Pettigrew said, “I want to say, again, thank you for bringing this, Jeff. This is the way that we consider rules, and just because we discuss it back and forth, for me a lot of it is just clarification. That’s what it’s all about is you bring things to us and our staff — which was apparently very gracious in working with you. On behalf of myself, I really appreciate you bringing this.”

Bingham said, “Also, I think you are doing your job as a journalist to try to get the maximum amount of information into the public arena. I mean that’s admirable, and you are certainly being a professional in the best sense of that word by raising these issues. I’m just expressing my concerns.”

The Chairman said, “I must be very frank with you. I share the concerns of Commissioner Bingham. Both of us are ex-prosecutors, and we are very sensitive to the basic legal principle of due process and probable cause. I know we are throwing legal terms around, but they are very meaningful. I am a firm believer that a free and objective press is the foundation of democracy. And, I think that an informed electorate — an informed citizenry — can achieve that status only by an objective and free press. So, I know where you are coming from, and I support it.

“But, as Commissioner Bingham says, we might review something, not from a prosecutorial standpoint as far as criminal prosecution, but because we are determined to look at it from whether or not it violates one of our rules of ethics. Then — if it looks like there may be a potential criminal case here which we are not constitutionally mandated to handle but we think that somebody else needs to look at it — then we have the option of submitting it to the Attorney General or the FBI or U.S. Attorney or somebody else. The principle of innocence until proven guilty arises.

“We have a duty and an obligation to protect the innocent, and, as Commissioner Bingham suggested, it is a brand new investigation once

it is submitted to another prosecutorial authority. So, quite frankly, although I agree in principle with the disclosure, I have some real misgivings about this rule. And, I'm just telling you up front. But, I appreciate very much your coming, and you are always welcome."

There were no further comments.

Rule Amendments #11 and
#12

The Chairman said, "Now the last two rules have been proposed by Representative Mike Reynolds ["Reynolds"]. Representative Reynolds, we would be happy to hear from you. We've heard from you before on these rules. And, we want to hear from you again, but as you and I know, there's no need to repeat what you've already said. We listen to you. We pay attention to you."

Reynolds said, "Thank you, Mr. Chairman. I appreciate that. If I might comment just briefly on that last rule. I have a question. Is the Commission currently prevented by rule from releasing the names? And, I think you are. And, if that's the case, I would hope that, with regards to the last rule, the Commission might remove that prohibition so that if you decide to refer something out, you have the liberty, as Commissioner Bingham just indicated, of making the decision at that time. For this one, we have enough evidence. We are going to go ahead and provide that information that was requested by the *Journal Record*. So, possibly, a rescinding of that prohibition against you guys doing something might be something you would want to consider.

"But, I didn't come to speak on that. I came to speak on Rule Amendments #11 and #12. Thank you.

"If I could, I'd like to speak on Rule Amendment #12 first because I can be briefest on that one. This is a rule that is self-explanatory, and it simply requires that you shut down a campaign committee. In the business world, many companies are frustrated by departments that have an overabundance of cash at the end of their fiscal year, and they spend it all up because they are afraid that the next year they are not going to have that cash available. If they don't spend it, they're not going to get the budget the next year.

"And, I think that for some candidates, including myself, sometimes it would be unwise for me to close a candidate committee. It wouldn't be fiscally responsible for me to close a candidate committee particularly if I had debt before I had raised that money. And yet, you can't begin raising money for your next committee. So, this would

eliminate that desire of any candidate to continue with the campaign committee after a certain deadline. I visited, as you probably know, with Ms. Hughes with regards to what potential time frame one might choose and the six-month seemed to be very appropriate. But, whether it was six months, six days, six weeks, is irrelevant to me. I just think that giving some definition to that would help us all along. I'd be happy to answer questions about that if there were any.

The Chairman said, "Alright. Thank you, Representative Reynolds. Does anyone have a question?" There was none.

Reynolds said, "Then with regards to rule 11, as I was doing research on the last campaign cycle, I was trying to — and I'm not trying to be repetitive here; I think I said this before — but I was trying to match Schedule G transactions which were given by committees or by PACs to candidates. I was trying to match those to Schedule A1 transactions which are the receipt of those. And, I discovered that a committee had reported a contribution to me that I'd never received. And, in fact, it is a committee that I felt like wouldn't consider giving me a contribution.

"And so, it occurred to me in thinking about that — and I discovered actually that had happened to several other legislators — but it occurred to me that probably the worst thing that could happen to me is that if I were in, let's say, in the Primary and being a staunch Republican, and the Oklahoma Democratic Party reported on their campaign finance report that they had given a \$5,000 check to me, but they just never bothered to mail it, and my opponent said — if I were him, I would sure say — 'Mike Reynolds got a \$5,000 check from the Oklahoma Democratic Party,' and I never received it.

"And, I thought, what can a possible remedy for that be? And so, in visiting again with Ms. Hughes, we determined that possibly a date definite at which a person must receive a check that's given by a committee. I think we put ten days in here, so if someone writes a check, they're going to have to tender it to you so that you can send it back and say I don't want that check anyway — as opposed to it appearing on their campaign finance report, and six months later you find out that they reported you as receiving a check that you never even saw."

The Chairman said, "Thank you, Representative Reynolds. And, your judgment and your thoughts are very valuable because you are a member of the Legislature, and you have to live daily with these rules.

We recognize that. Does anyone have any questions of Representative Reynolds?"

Pettigrew was recognized. She said, "I am not sure, I've never been a candidate, but I have worked in businesses and associations that businesses support, and there is no way that I could cash a check within ten days of the time it's tendered. I can give you some specific companies. It's got to go to this office and that office and this office, and then the person who is actually the one working with my organization wants to bring it to me. By that time it's 30 days or 45 days old. Is it different on campaigns? Do you really think that we can live with that?"

Reynolds said, "Well, I hope we could. And, I'll simply put it this way. If someone wrote me a check for my campaign, if they didn't get it to me rather rapidly, I don't know why they would bother to write the check in the first place. Additionally, if they wrote the check, and they had enough time to get it on the campaign finance report and three months later amend their campaign finance report, and I still haven't received the check, ten days may be too rapid. But, I was actually contemplating what you said this morning, and we might say, 'Well, if ten days is too much, at the very least it has to be tendered by the deadline for filing the campaign finance reports. Because, if you can get it on the report, surely you can put it in the mail.'"

The Chairman said, "Thank you. Any further questions for Representative Reynolds?" There were none. "Thank you very much, Mike, for coming to Ponca City today."

Bingham said, "Mr. Chairman, we have a very important proposed amendment to the rules, Rule Amendment #13, but I wondered if we could just take a short break."

The Chairman replied, "You are reading my thoughts. We have been in session for almost an hour and a half. Let's make it a very short break, and we will be back in the Commission room in the next ten minutes and take up Rule Amendment #13."

After the break, the Chairman said, "Before she leaves, there is another outstanding citizen of Ponca City, Sue Lunsford. Thank you for coming. This lady does a remarkable job for the City of Ponca City. And, I'm also delighted and honored to present a colleague of mine and also the Municipal Judge of Ponca City, Judge Paige Lee, who is present."

Judge Lee, would you be recognized. Thank you very much for coming. We are delighted to have her.”

Rule Amendment #13

The Chairman said, “Let’s move on now. We are still discussing proposed rules. Rule Amendment #13 was presented and is being sponsored by Commissioner Pettigrew. And, it was not in the original packet, but you received copies of it a couple of days ago. Commissioner Pettigrew, I will ask you to introduce your rule amendment, and then we’ll call for comments.”

Pettigrew said, “Thank you. I think one of the responsibilities of the Commission — and we’ve discussed this in the past — is we want transparency, and we want information. But, we need to balance that with the ease of compliance. As our Chair said at a recent meeting, we’re not in the “gotcha” game, trying to catch someone for not complying. And, I felt that this rule was confusing — the way it was drafted — and perhaps also created a duplication of effort that didn’t add anything to the information or transparency.

“This has to do with what’s called the five-day rule that all contributions received by a deputy treasurer or an agent of the committee, including the candidate on behalf of a committee, shall be provided to the treasurer or, in the treasurer’s absence, the deputy treasurer not later than five days after receipt. Having been involved in the situation of giving campaign contributions, I know that many times someone may be carrying around a check waiting for a certain meeting so that they can take the check to the meeting or waiting for the right opportunity when it’s not inconvenient and not imposing or some other reason why they are not giving them something.

“There are just a lot of reasons for not being able to comply with the five-day rule, and I think it’s very unfair to the candidates to put them into that situation when we have the ten-day rule which will still be in effect that says that all contributions accepted by the committee shall be deposited in a campaign account within ten days after acceptance. So, I really felt that, for ease of compliance without changing any of our real information, we could eliminate the five-day rule.”

“Then the second part of this — it could be divided into two rule proposals. I put them altogether.”

Bingham said, “If I may, Commissioner Pettigrew, I just had a question. Will this proposed change — 257:10-1-10 deals with the

deadline for depositing into the campaign account — does this have an impact on reporting rules elsewhere?”

Pettigrew said, “You are always going to get the information, I believe, in the last report that they make before the election. Right? Maybe I don’t understand your question.”

Bingham said, “Well, it doesn’t strike me that this rule affects reporting requirements, otherwise.”

Pettigrew said, “Okay. I get that.”

Bingham said, “But, if somebody... Marilyn. Mr. Chairman, if you’ll recognize her.”

The Chairman said, “First of all, let me say, Commissioner Pettigrew, have you completed your introduction or are there any other comments that you care to make about your rule?”

Pettigrew said, “I talked about the first half. I have not talked about the second half.”

The Chairman asked, “Why don’t we talk about the second half?”

Pettigrew agreed. She said, “This has been reported as a problem to me that candidates who have no opponent still have to fill in the paperwork and make the filing. I think that there is nothing to be gained by that because you’re going to get all of the information at the last filing of the paperwork before the election. But, to have them making reports when they don’t have an opponent seems to me almost like busywork and, certainly, extra work for our staff.

“Therefore, this amendment would say that they would not be required to file a pre-election report, but that all of the information that was needed would become available at a specified time when they did have to file.”

The Chairman said, “Thank you, Commissioner Pettigrew. Does anyone have a question of Commissioner Pettigrew about this? Let me say before we take comments that we are indebted to Dr. Pettigrew for reviewing all of our administrative rules and coming up with solutions that allow us to move forward with expedition and accuracy, and the almost overwhelming job that staff has in keeping track of all of these

things. And, anytime we make a change, however slight or however meritorious it may be to our administrative rules, I look to our staff to tell us what kind of impact that may have. And so, with that in mind, I'm going to ask Ms. Bryant because she will be primarily responsible for maintaining the records.

"Patti, do you have a comment, and be very frank with us. Do you have a comment about how this would impact your department?"

Bryant said, "Yes, I do. I have discussed this with our Executive Director and other staff members — in particular, the repository staff members — and we all feel like this would be our worst administrative nightmare. Ever since this rule has been proposed, in the last week or so, I have thought about it extensively and pondered it and tried to figure out how we could make this work. And, it would just make the whole election cycle chaos.

"The reasons for this — there are a lot of different things that we do administratively to make it all work. One thing we do, we present a calendar of due dates for everybody to know when reports are due. In order to make this a clear thing on our calendar, it would be almost impossible to figure out all of the different scenarios of when certain people file certain reports and when they are due and to make that clear on our calendar. That's one thing."

Pettigrew said, "Are you talking about both parts of this or just the second part?"

Bryant answered, "...only about the second part. We send out notices prior to each report of the reporting period that the report covers and the period when it is due. With all of the different scenarios of — this person is on the Primary ballot but not the general; he's not going to be on the ballot until the General; or maybe he's on the Run-off after the Primary — it would be really hard for us to distinguish exactly who needs to file which report, what period it covers, and things like that.

"Another thing, we get numerous telephone calls during the election cycle asking when my next report is due. For every phone call we get, we would have to research that candidate, which ballot they are on, figure out exactly which dates apply to them. It would be almost impossible. We are already overwhelmed during the election cycle trying to keep track of everything. It would be really hard to do. We always try to educate all of the candidates as to when the reports are due. We send

them notices. We have them come by during the filing period and talk to staff. A lot of them do, but many of them don't.

“Not knowing the rule change, they would continue to file their reports throughout the election cycle — electronically — online. So, you would have some candidates running for the same office filing a report as they are doing now and others not filing. And, then we would get phone calls from the public asking why isn't a certain candidate's report online. Well, maybe they weren't on the ballot, or maybe they just failed to file the report that was due. I just can't even imagine how we would handle that.”

Pettigrew said, “I certainly don't want to make things harder for you.”

Bryant continued. “On our electronic filing system, we have dates for the candidates to choose which reporting period they need to use. Right now it is already confusing because there are quarterly reporting periods for 2008 and there are pre-election reporting periods for 2008. That's only two different ones. This would add all of these other different dates on the electronic filing system for them to choose from. When they pick the wrong date, they call us and we have to fix it for them. So, we would have many, many more occasions trying to fix the electronic system so they can get their reports filed.

“The next election cycle is a state-wide election cycle. We will have many, many more candidates, and I can't even imagine trying to handle all of the different scenarios during that period.

“Now, on the other side of it, you are always talking about an even playing field and public disclosure and full disclosure. Say there is a candidate that is running for a statewide office, and the incumbent is a Democrat. He is the only Democrat running, but he has two or three Republican opponents. He might file a report due during the first quarter of the year in April, then he's not on the ballot until the General, so he doesn't have a report due until late October. So, that is six or seven months that go by that people don't know where that candidate's money is coming from. And, that is very important. People want to know that during the entire election cycle.”

Pettigrew said, “I see your point on that. What if this were changed to that person has an opponent, even let's say the Democrat is

the only Democrat running, but there are three Republicans running. He has an opponent. So in those cases, I think he should be reporting.”

Bryant said, “But, he is not on the ballot until the General Election, so how do we track who files what? When? I’ve been thinking about this and trying to figure it out.”

Pettigrew said, “What I was trying to think of was a situation where there is absolutely no opponent. They are, once the filing period is over, they are going to be the next legislator.”

Bryant said, “Okay, completely unopposed. That does happen often, but they are still collecting money, and the public wants to know where their money is coming from no matter whether they have an opponent or not.”

Pettigrew said, “Even though you are going to get it before the election day?”

Bryant said, “You are saying that if they aren’t on the ballot, then they wouldn’t have to file any report. Is that what you are saying?”

Hughes said, “I think you are suggesting that they would not do the pre-election reports — that they would go back to quarterly, which would also complicate the process because we would have some 2010 candidates filing quarterly. We would have most 2010 candidates filing pre-election. And, those would be so close together that it would be really difficult because you’ve got pre-election reports for the general election due in October. Then you’ve got quarterly reports due by October 31, and it’s bad enough when you’ve got 2002, 2004, 2006 and 2008 candidates filing quarterly. Then to say you’re going to divide 2010 into some quarterly and some pre-election. It just, as Patti said, it sort of boggles the mind when you’re dealing with all of these people on the phone.”

Bryant said, “If they don’t have any activity, there is a Form C-3R, Statement of Inactivity. So, if during a reporting period they don’t have activity, there is a simple form to file.

“One more point. We have research groups and people across the country who study the election cycles for all of the states. And, it would be like comparing apples and oranges. We wouldn’t be getting reports from candidates during the election cycle for all candidates. But, in other

states they would. So, when they go to look at the numbers, they wouldn't jive. It would be like apples and oranges. They wouldn't be comparing the same things. Anyway, those are my concerns."

Bingham said, "This is probably such a basic question, and I'm going to disclose my own ignorance and ask it. If I've got an opponent say in the General Election, and I won the race in the General Election, when is my first post election report due?"

Bryant answered, "All candidates, until you file a final report, the next report would be a partial-quarterly report covering, for instance, this year it would be October 21 through December 31. And, it's due January 1 through February 2."

Bingham asked, "So, I would need to file it by January 1?"

Bryant answered "...from January 1 though 31. It's usually during the month following the end of each quarter, so they would have the whole month of January. But, the deadline would be February 2 this year because the 31st falls on Saturday. So, it would be between January 1 and February 2 that they would file the next report."

Bingham said, "Okay. If I am an incumbent, and I'm the only filer — I'm unopposed by any party; I'm the only one who filed, or I am the incumbent, and I didn't draw an opponent — and again, I'm not sure I understand this rule completely. Commissioner Pettigrew, does the rule that is currently drafted say that I would not be required to file any pre-election reports?"

Pettigrew said, "That is the way I understand it."

Bingham asked, "So, if we had that person who is truly unopposed, the only filer, report along with everybody else in January or February, no pre-election reports and no post election reports until that first report, does that increase staff's work?"

Bryant answered, "Yes, because we still have to distinguish at some point in time that they don't have reports due and separate the ones that do from the ones that don't. We get phone calls asking, 'When is my next report due.' Then we have to ask, 'Are you on any ballot?' A lot of them call all the time. And, it would just take so much staff time to try to distinguish what the scenario is for each case.

“One more point that I wanted to make that I didn’t. PACs or non-candidate committees would still be reporting the pre-election reports. So, if they give a transfer to a candidate, it will show up on their reports. But, if that candidate were not required to file a report during that same reporting period, there is no cross-check. That candidate would not be reporting that contribution until way after the PAC reported it.”

Pettigrew said, “Go through that again.”

Bryant said, “Okay. If a non-candidate committee, like a political action committee, gives a candidate a contribution in August, and the candidate is, what you are saying, is not opposed, they have no opponent, then they would not be reporting that contribution until January, but the PAC would be reporting it on their report that is due in August. So, there is no cross-check on whether that candidate is going to report that until way after the PAC gave it. People look at that to see if, well, did the candidate report this contribution from this PAC?”

Pettigrew said, “I see.”

Bryant said, “I know there are a lot of things I haven’t even thought of. But, these are the things that have just come up during the last week.”

Pettigrew said, “Thank you. That is why we bring it up here to see if it works — if it helps or not. Do you have any problem with the first half?”

Hughes asked, “Let me speak to that one. In answer to Commissioner Bingham’s question earlier about whether it would affect the reporting, we have a rule definition of the term “accept” that says that ‘with reference to a contribution, means failure by a candidate, treasurer, deputy treasurer or agent of a committee to expressly and unconditionally reject and return a tendered contribution to the contributor within six (6) business days from receipt of the tender.’ So, that was the reason for the five-day rule for giving it to the treasurer so that, if it were determined either by the candidate or the treasurer that the contribution should be rejected, they would have that time — because within six (6) business days, you are deemed to have accepted it, and it must be reported.

“You can then return it, but it must appear on the report, and the refund appear if you determine to not accept it or to return it. But, you are deemed to have accepted it, and you report it. So, it all sort of ties in,

and if an agent isn't required to give it to the treasurer or the candidate, and neither has knowledge, they have accepted it whether they wanted to or not."

Pettigrew asked, "Is it possible to extend that time frame of the six days? Is that another rule or is that not possible?"

Hughes said, "The reason for the six (6) business days was in order to solve a problem that the original Commission perceived and was addressed also by the contributor statement — and that was that many candidates would game the system by holding on to checks, or their agents would hold on to checks so that they would not be reported in the pre-election report — and then they would be tendered to them after the pre-election report so it wouldn't be reported before an election, and it was too late for the public to have that information until after the election.

And so, the six (6) business days forced you to make that knowledgeable to the candidate and to the treasurer. The treasurer must report it because it is accepted within six (6) business days. Without that limit, you can game the system, and you don't know when the check was tendered or when it was received or whether it was used as collateral for an expenditure that was made and should have been part of the disclosure before an election."

Slater was recognized. He said, "If it is over \$500, they have 24 hours to report it, don't they?"

Hughes said, "...24 from acceptance. That's right."

Slater said, "So the public knows before the election."

Hughes said, "If it's \$500 or more, right, and they are on the ballot. If they are not on the ballot, they don't have last minute reports due."

Slater asked, "How do you figure that out?"

Hughes asked, "Whether they are on the ballot?"

Slater asked again, "How do you figure that out? How do you keep track of that?"

Bryant answered, “We aren’t able to track that. We don’t have the staff to do that.”

Hughes said, “With seven staff members, it is very difficult for us to determine. Most of those things are turned into us by the public, rather than us discovering them, quite frankly.”

Pettigrew said, “I just know from personal experience that five days is something that can be very easily turned into a ‘gotcha’. I just really think we need to do something about it.”

Hughes said, “Even if you just sent a copy of the check to the treasurer, at least the treasurer would have the knowledge so that it would be reported and be accepted.”

The Chairman said, “Thank you, Commissioner Pettigrew. All of this is very enlightening. We must take into consideration the impact that these administrative changes would have on an overworked staff. In an ideal world, we would have a full administrative staff. With the blessing of the Legislature, we could have that. Because of the shortage of administrative personnel in our office, we are constrained significantly, irrespective of the merits of a rule. We have to take that into consideration, as well.

“I believe this concludes the discussion of pending rules.”

Approval Of Minutes

Next was consideration of whether to adopt the minutes [both open and closed sessions] of the regular meeting held October 17, 2008

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

Hughes was recognized and pointed out errors discovered by commissioners. She said, “On page 9, last paragraph, third line, instead of ‘dragon’ force, it should have been ‘driving’ force. Commissioner Loy says he probably said ‘dragon’, but we think it’s probably ‘driving’ force. On page 12, first paragraph, seventh line, at the end of the word ‘meeting’ in that sentence, it should be a single quotation mark. And, if you’ll notice the two words following that are ‘I, I’. One of those can be eliminated. On down to the fourth paragraph, sixth line, it says ‘U.S. Department of Labor’. Labor should be capitalized. Page 17, the very last paragraph, the seventh line, the word ‘mute’ should have been spelled

‘moot’. It’s not silent. In the next line it should have been the conjunction for ‘it is’ with an apostrophe instead of just ‘its’.”

The Chair entertain a motion to accept the minutes of the closed and open sessions consistent with the amendments suggested by the Executive Director. Bingham so moved; Pettigrew seconded the motion. Roll was called for purposes of the vote, and the motion passed unanimously.

Ratification of
Expenditures

The Chair then called for consideration of agency expenditures for the period beginning October 1, 2008, through and including October 31, 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.

The Chair said, “This was on the agenda for last month, and several of us wanted an extra period of time to review this, so it was continued until this month. I think Commissioner Bingham had asked specifically for additional time. Do you have any questions?”

Pettigrew said, “I wanted to make a comment. I really appreciate the staff sending out—in our information packet, the Administrative Report—the legal references for this. It really helps to understand the report. Thank you very much.”

The Chair asked, “Is there a motion that we adopt?”

Bingham so moved. Loy 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, “Let me suggest that Commissioner Pettigrew has spent an enormous amount of energy and work on this, and we are greatly indebted to her for her work. And, I would like for you to

introduce your packet and make any comments you care to make. Commissioner Pettigrew.

Pettigrew said, “Thank you, Mr. Chairman. First of all, I would really like to say thank you to our staff again. It would not have been possible to put this together without their assistance. Marilyn provided the job descriptions and all of those other plans and policies that are required by law. Rebecca, our attorney, worked very hard on this procedure item and helped me get it into the correct form in the book. If you open the little blue book —and I know he tells me never to give him any credit, but my husband Paul did this, putting it together and into a little packet —the only things that were changed were things we talked about last time.

“Dividing it into three easy parts, the policies pertaining to the Ethics Commission itself, the one about the investigative procedures maybe doesn’t fit exactly, but there was no other place for it, and it’s very important to have it in there. And, then the second part, which you notice is in pink pages, the job descriptions. And, then personnel policies in blue that go along with that. And, that’s really all of the changes from last month. And, if you have anything you want to change, we can do it right now. I’m sure the Chairman will agree.

“I’ll also remind you that this is not a static document. It can be changed at any time by action of the Commission. And, if we need to adjust these policies because they require reports, we tried to pick out the things that might not be changed from year to year to put into the policy book. But, if there are changes, we can adjust it if we have those change next year. So, I move adoption of the policy book.”

Bingham seconded the motion.

The Chair called for discussion and said, “Let me lead the discussion again. Let me first express our gratitude to Commissioner Pettigrew on behalf of the other members of the Commission for this work which I consider a work in progress. And, you have suggested that, from time to time, there may be additions and changes. But, this will be an enormous benefit to anyone coming on the Commission, and those of us who have served for several years will probably also benefit from it. I’m going to read it eagerly, and I’ll probably find a lot of things there that I didn’t know about. So, we are all very grateful to

you, Commissioner Pettigrew. Are there any other comments before we take a vote on this?"

Hughes said, "I'd like to thank Commissioner Pettigrew and Commissioner Loy also for their review of the minutes."

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

Administrative Report

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

Closed/Executive Session
for Consideration of the
Confidential Matters Set
Forth on the Agenda

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

The Chairman called for advice from the General Counsel on the lawfulness of the proposed executive session. Adams stated that matters set forth at Item 15 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. Pettigrew so moved. Bingham seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously.

Loy moved that, with respect to IV-2007-008, no action be taken; that with respect to IU-2008-004 the Commission issue a private

reprimand as submitted by the Staff; that IU-2008-006 be continued; that IU-2008-007 be continued and that Staff proceed as discussed in executive session; and that, with respect to IU-2008-008, no action be taken.

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.

Next Meeting

The Chair called for discussion on setting the December Public Hearing and Regular Meeting. The date was set for Thursday, December 11th at 10:00 am.

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 Pettigrew so moved. Bingham 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