

MINUTES OF REGULAR MEETING
of the
ETHICS COMMISSION
STATE OF OKLAHOMA
held
APRIL 10, 2009

Call to Order

Upon notice with agenda being properly posted at the principal office at least twenty-four (24) hours previously and notice being filed at least ten (10) days in advance with the Office of the Secretary of State, a regular meeting of the Ethics Commission of the State of Oklahoma ["Commission"] was called to order on Friday, April 10, 2009, at 10:00 a.m. Chairman John Raley ["Raley"] presided over the meeting which was held in Room 419C, State Capitol Building, Oklahoma City, Oklahoma.

Introduction Of New
Member And Swearing In
By Chief Justice James E.
Edmondson

Next was introduction of the new member and swearing in by Chief Justice James E. Edmondson ["Edmondson"].

The Chairman announced, "We have a very special event before we call the meeting to order. It is always an exciting situation when we have a new member sworn in to the Ethics Commission, and such is the occasion today. We are honored to have with us the Chief Justice of the Supreme Court to administer the oath. Mr. Chief Justice, would you do so? All rise.

Edmondson then swore in Robert (Bob) McKinney ["McKinney"] as Commissioner of the Ethics Commission. After a round of applause, he said, "Thank you all very much for having me."

The Chairman stated, "Thank you, Mr. Chief Justice. We are honored to have you. And, congratulations Commissioner McKinney. We are honored to have you with us.

Determination
of Quorum

Roll was called to determine the existence of a quorum for the transaction of business. Commissioners answering present were: Raley, McKinney, Jo Pettigrew ["Pettigrew"], Don Bingham ["Bingham"] and Jim Loy ["Loy"]. A quorum of qualified members was found to exist and the business of the meeting went forward.

Commission staff members present were: Marilyn Hughes ["Hughes"]; Rebecca Adams ["Adams"], General Counsel; Patricia Bryant ["Bryant"], Principal Assistant; Charles Knight ["Knight"], Information Systems Network Administrator; and R. Darey Roberts, Investigator. Observing all or part of the meeting were: Lee Slater, attorney; Michael McNutt, *The Oklahoman*; Caroline Dennis, Senate staff; H.J. Reed, lobbyist; Amy Alden, House staff; Scott Cooper, *Oklahoma Gazette*; Mary Francis, citizen; Representative Mike Reynolds; Shawn Ashley, *Capitol Network News*; and Jeff Packham, *Journal Record*.

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 new items introduced for discussion or those listed in the published document titled: *Rules of the Ethics Commission, Proposed Amendments and/or Drafts for 2010 Legislative Session for consideration at the April 10, 2009 Regular Meeting of the Ethics Commission*, incorporated by reference in this agenda as fully set forth in the document.

The Chair stated, "We will move on to the first item on the agenda. As all of us know, the first item usually is the discussion of pending rules. This is an opportunity to discuss rules that have been suggested. Some of them have sponsors. Some do not. In January we will vote on them. But, the suggested rules are listed in the handout, and I think all of our guests have had an opportunity to review them. Is there any discussion today by members of the Commission or any of our visitors concerning any of these potential rules?"

"Commissioner Pettigrew, I think the first couple of rules were yours. Would you like to discuss them again or is there anything you would like to add today?"

Pettigrew answered, "Not at this time, thank you, Mr. Chairman."

The Chair asked, "Does anyone else have any discussion or any comments they would like to make about the pending rules?" There were no comments. No action was necessary.

Staff Report on the Federal
Court System for Verifying
Electronic Filings

The next item was staff report on the federal court system for verifying electronic filings. The Chair stated, "There was a comment in the administrative report, and we'll call on our general counsel if she has anything that she would like to elaborate on."

Adams said, "Mr. Chairman, at the last meeting Commissioner Bingham mentioned that the federal court system had devised a means whereby petitions and informations can be verified on online filings. I checked with the Clerk of the Eastern District of Oklahoma. I checked also with the Clerk of the Western District. They have effected this through a uniform system coming out of Washington D.C. although each individual district court has slightly different rules about it.

"It is essentially effected by a document that the filer will sign verifying that he or she will adopt that electronic signature whether it is used by the filer, the secretary, the legal intern or whoever. No matter who files the document, the responsibility will lie with the filer, meaning the attorney. That seems like a simple system. I wanted to give a report on it because at the last meeting, we were looking into whether it would be possible for us to do away with our paper verification form, the C-VR. I believe the federal system would work for us, and if the Commission so desires, staff could talk with our software developer and procure more information to that end.

The Chair asked, "Does anyone have any questions for the General Counsel?"

Bingham stated, "Rebecca, I think I've only filed some verified pleadings once, maybe twice, so my memory may not be correct. But, I believe some of either the local rules or policies require that if you file a verified instrument electronically, yes, you have signed a piece of paper with the notarization, and even though you filed electronically the same document, you're required to keep the original that you signed under oath."

Adams agreed, "Yes, that is my understanding."

Bingham continued, "So, if there is any question about whether or not you did it or when you did it, you have an obligation to keep that original which you actually put your handwritten signature on."

Adams concurred, "That is my understanding, at least in the Eastern District."

The Chairman asked, "Does anyone else have any comment? I see some real merit to this. My overriding concern, and I'm sure it is shared by the other members of the Commission, is whether or not this is going to have an impact upon our staff and whether or not it is going to create additional work. I know that Patti will be able to tell us whether or not this is going to cause some additional problems."

Bryant answered, "It would decrease our work."

Pettigrew said, "Mr. Chairman, remember that this was responded to by our Executive Director in the hearing before the House that it was something the staff would like and that it could help them a great deal."

The Chairman continued, "Alright. Anything else on that particular item on the agenda?" There were no further comments.

Discussion of a
Comprehensive Review of
Ethics Rules

The next item was discussion of a comprehensive review of ethics rules. The Chair said, The staff has produced for us a list of suggestions and rule changes that we might want to consider [as follows].

STAFF SUGGESTIONS FOR DISCUSSION OF POTENTIAL RULE AMENDMENTS

Following the discussion at the last meeting on a review of the Rules, Staff has the following list to offer of items we would like addressed. These would certainly facilitate answering compliance questions. We ask the Commission to consider:

- clarifying what is "political activity" which is currently an approved expenditure from campaign funds;
- specifically exempting the Speaker's Ball donations from "anything of value" or including it in the definition of "political activity";
- requiring mandatory filing of Form F-1R or F-2R at least every five years thus limiting the filing of Statements of No Change [F-3R] to no more than four consecutive years;
- requiring e-mail addresses for filers of statements of financial interests in order to test the feasibility of providing reminders at no cost;
- requesting the Legislature to change the assessment statute to allow the Commission to keep late fees as appropriated monies in its Revolving Fund;
- requesting the Legislature to require e-mail addresses as part of the lobbyist registration form in order for Staff to assign the electronic filing of registrations and reports to the lobbyists;
- removing Section 257:1-1-6(c) on replacement of a commissioner by the Chief Justice of the Supreme Court; this

was a statute prior to the Constitutional Rules and is not needed in light of the constitutional provision that a majority of the members serving shall constitute a quorum; if deleted, 257:30-1-6(a)(4) making communications between the Executive Director and the Chief Justice on such disqualifications should also be deleted;

- adopting different definitions for “ immediate family” in 257:1-1-2, one to apply to Chapter 10 on campaign contributions and the other to apply to Chapters 15 and 20 on financial disclosure and ethics and conflicts of interest;
- reviewing the definitions of “ associated” and “ substantial financial interest” to determine whether the amounts and percentages are “ reasonable” for year 2010;
- eliminating any reference to a “ hearing” in Section 257:1-1-6(i) clarifying that the Commission is a prosecutorial authority rather than an administrative tribunal;
- eliminating as duplicative the former statutory need for an “ annual report” in 257:1-1-6(o) since this information is now required in the annual budget request and ethics interpretations and informal opinions are published on the website;
- deleting 257:10-1-2(b); this provision was passed pursuant to a recommendation by a task force; the Commission asked the Legislature to conform 21 O.S. 187.1 to these limits for several years; their failure to do so makes contributing these amounts a criminal offense; above \$5,000 constitutes a misdemeanor and above \$10,000, a felony;
- conforming 257:10-1-14(a)(19) to the new rule allowing three attempts to obtain a contributor statement; this provision requires the filer to certify that, prior to accepting a contribution, they received a contributor statement for the contribution;
- clarifying whether the ban on PAC-to-PAC transfers applies to federal PACs giving to state PACs; and
- clarifying in 257:10-1-20(b)(2)(C) and (b)(3)(C) that, upon dissolution, PACs cannot make PAC-to-PAC transfers.

The Chair continued, “I have read through them, and I know all of you have. Some of them have some real merit. Just on the surface, I can see how they would be an improvement. I’m not sure that we want to discuss these in depth today. If someone wants to single out one of them for discussion, we can do so. We’ve got plenty of time to look at them between now and January. But I see already how some improvement could be granted to us by accepting the recommendations. Does anyone want to single out any one of these proposed changes for discussion?”

Hughes responded, “They are brand new to the public today, so you might want to wait a month to allow people to review them.”

The Chair stated, “Why don’t we do that? We’ve got plenty of time, and within the next several months, we will review them individually and make some decisions on them.”

Pettigrew said, “In light of this discussion item, the comprehensive review of ethics rules, we discussed doing this at the last meeting. And, I have talked with both the Chairman and our Executive Director and suggested that we not move very quickly. I think, by the very fact that we have brought it to the attention of the Commission, we’ve already got some good response — such as the list of things that we might want to consider changing.

“I think by putting this out, we may generate some other ideas from the public — ideas that need to be looked at. I also thought, because we have a brand new commissioner, it might be good to give him a couple of meetings to get on board and figure where we are on these things before we consider as a Commission creating a task force and reviewing them. So, I just want to say that I certainly want to pursue this, but I think we should take it very slowly.”

The Chairman said, “I certainly agree with you, Commissioner Pettigrew. These things deserve our closest consideration, and I can see some real benefit that we could receive by adopting some of these rules. But, of course, we don’t want to overload our staff.”

Mary Francis [“Francis”] was recognized. She announced, “My name is Mary Francis, 850C Cardinal Creek Condos in Norman, Oklahoma.”

The Chair said, “We are glad to have you. Please have a seat and make yourself comfortable, if you will.”

Francis said, “Thank you. I’m a little bit lost. Things may have changed since I last looked at this. I came in order to speak to the amendment listed as amendment #3 which would create a ‘gift list’. And, I’m wondering if maybe I have lost the order of things here. Is that on the list upcoming or...?”

The Chair answered, “We would be pleased to hear from you. You’re right on schedule.”

Francis said, “I hope you will indulge me for just a minute to give you a little bit of background to my relationship to this Commission and to the issues at hand. I was, in 1988, a member of Common Cause. Common Cause is the group that monitored Governor Bellmon’s

Constitutional Revision Study Commission. We set up a committee. I was chair of that committee who monitored Governor Bellmon's Commission. On every Saturday we met with them for months. And, we proposed the Ethics Commission. That is how this Ethics Commission came to be.

"The Governor's Chief of Staff and General Counsel, Andrew Tevington, at the time was on the writing subcommittee of that Commission, and he picked up our proposal for an Ethics Commission, a new ethics Article to the Constitution creating an Ethics Commission. And, he ran with it. We were delighted.

"Ever since then for the last 18 years or so — I guess it's been over 20 — or for the 18 years that it's been in existence, it appears that it has received mixed reviews from the Legislature. The Legislature has, under Democratic and Republican authority, in many instances attempted to thwart the Ethics Commission by starving it of funding and other methods of changing it, i.e. changing the name — an amazing number of attempts to see that the citizens of Oklahoma who created this Ethics Commission by an initiative petition by a two-thirds vote are thwarted.

"I came to speak to this proposed amendment — which, I understand, is by Dr. John Wood — who is also a member of Common Cause, or was at least on the board; I'm not sure if he is still there — which would set up a "gifts list" or a "no gifts list". It seems to me that this is a wonderful opportunity for those who are elected to be able to say, 'I am not one of those politicians who is *on the take*', as I've heard some people talk about politicians being *on the take*.

"It would be a great opportunity to provide some protection for oneself if one is an elected official. I heartily endorse Dr. Wood's amendment, and I urge you to think seriously about this. I would also urge the Legislature to see this as an opportunity.

"I would urge the Legislature to, on another matter, start funding the Ethics Commission. I do regret that at the time of its inception, when Dr. Tevington and the Common Cause people were talking about how to create this and what to include, we did not remove funding from the Legislature. We allowed that to stay as a matter of legislative priority. And, the last 18 years have shown that that was a mistake.

"It may be time for the people — who by a 2-to-1 majority approved this Commission and want this Commission — to come back and change that Constitution so that we tie the budget of the Ethics Commission to something that the Legislature cannot mess with — if you will pardon my vernacular. Thank you for your attention."

The Chairman said, “Mrs. Francis, let me say in response to you, first of all, we are deeply appreciative that you would come and speak to us today on these two matters which have been of overriding concern to this Commission now for some months as you are aware. I think each one of us here agrees with you that a strong, vibrant Commission can be so only if it is independent — that’s what we are striving to achieve — and that we can only be independent if our funding is adequate to provide us that independence.

“This is a matter of great concern and has been the topic of much discussion over the last couple of years as you are well aware. The framers of the amendment to the Constitution, while they were well meaning people and obviously quite conversant in constitutional matters, may have allowed a fatal flaw to occur. The framers of that constitutional amendment assumed, with good reason perhaps, that the term ‘adequate funding’ would be sufficient. Unfortunately, it was not.

“I agree with you that, in order to achieve — and I’m speaking now as an individual commissioner and not as chairman — but I agree with you that perhaps ultimately the only way that we will ever be able to achieve full independence is another constitutional amendment which will take away from the Legislature the purse strings of this agency and allow us to be funded by some other means. That may eventually be what we have to do.

So far as the “no gift list” is concerned, I sponsored that last year as you may know. The Commission did not adopt it, but we agreed to hold it over for consideration again this year, and it will be considered again this year. We deeply appreciate, Mrs. Francis, you coming over and visiting with us today. You have a wealth of experience and knowledge because you were one of the founding mothers of this institution. And, we are grateful to you for your service to this state. And, thank you very much for coming.” Francis thanked the Chair.

Discussion on whether to
Amend the Commission’s
Archiving Schedule for
Disclosure Documents

“The next item is discussion on whether to amend the Commission’s archiving schedule for disclosure documents. I will call upon the Executive Director for comment.”

Hughes said, “I’m going to defer to Charles Knight who can explain the staff’s recommendations to the Commission. This is something that we’ll make recommendations for, but it will be up to the Commission to decide exactly where we establish our parameters, and Charles can explain what will happen to the records.”

Knight said, “Thank you, Mr. Chairman, Commissioners. A few months ago the question was raised as to why we had held certain records — and in particular financial disclosure records and campaign contribution reports — for a period of 42 years. Well, we did a little bit

of research on this between Ms. Bryant and myself. We've come up with the suggestion that we trim that down to keeping those for 20 years as opposed to 42. The reason is there has been very little, if any, need for records to be held past the 20-year point.

"Looking back at requests that we've had whether we keep the records in archives or we keep them in our office, there hasn't been anything that's been longer than 18 years back that anyone has requested. So, that's why we've made the recommendation of the 20 years."

Hughes said, "I would also like to mention that when the Commission, the original statutory Ethics Commission, was formed in 1986, the first thing that was done was the county election boards shipped their campaign contributions and expenditures reports to our office, our new office. Many of them are still in the original boxes and archived, and we are paying for storage of those records.

"If we reduced it to the 20 years, we could absolutely get rid of everything that we did not produce as a Commission. In other words, it was prior to the formation even of the statutory commission. The Constitutional Commission was formed in 1991 — statutory was 1986. And, all of those records came to us from the counties.

The Chair said, "Two questions. First of all, where did we come up with the rule that it was 47 years? Is that in the Constitution? Or is that statutory?"

Hughes answered, "...the 42 years. Back then, if I understand it from the Archiving Commission, most agencies chose very long periods when they originally set up the archiving schedules. But, most of them can't afford to keep those long schedules anymore. And, I think the 42 years was set up even before I came on board because I don't remember establishing a period of time. I really thought it was statutory. But, it's not. It was established by the Commission to say this is how long we need to keep these records."

The Chair said, "So, it's not statutory?"

Hughes said, "No, it is not."

The Chair said, "Second question — are we vested with the authority, the Commission itself, to make this change from 42 down to 20 years?"

Hughes said, "No, but you can make the recommendation to the Archiving and Records Commission, and they have the authority to make the change. They will have a hearing, and anybody interested can come to the hearing."

The Chair answered, “Thank you. Does anyone have any questions of the Executive Director or Mr. Knight concerning this matter?”

Hughes said, “We have some more recommendations on the lobbyists.”

Pettigrew said, “I wanted to make a statement on how much money on storage we might be able to save if you can give us an estimate. Also, I think you mentioned that we could clear out the hall significantly.”

Hughes said, “I will defer to Patti.”

Bryant answered, “Right now we are paying \$90.50 a month for storage of what we have. If we get rid of some of what’s over there — which would be most of it — we could archive what we have in the hall and send it over, but I don’t think it would be that much. It’s not a huge expense, but it is an expense.”

The Chair asked, “Is there any further discussion on this? I think staff is recommending that we seek approval of the archiving revision.”

Hughes answered, “Reducing the campaign reports to 20 years, but we have another recommendation for lobbyist reports and financial disclosure.”

Knight said, “That’s correct. We are also recommending that we go 20 years on the lobbyist records and on the financial disclosure. Ms. Hughes and I were discussing this a couple of days ago. There are actually two ways that we can go with the lobbyists. Ms. Bryant and I had originally discussed going six years, but after discussing it with the Executive Director, I think we are going to have to go initially with the 20 year cycle in keeping lobbyist records for the simple reason that this is the primary means that we have for doing any kind of research for lobbyist principals. We check against the financial disclosure and lobbyist principal records to make sure that there is no conflict of interest.

The Chair summarized, “So, it is the recommendation of staff that on these two items we seek permission from the archive committee to drop from 42 down to 20 years.”

Knight responded, “For all three. And, eventually, what we would like to do with the lobbyist records is take it down to six years because one of the proposed rules that we have on the staff suggestion list was to have it mandated that either an F-1R or an F-2R be submitted by individuals every 5 years. That would eliminate the need to keep our lobby records or financial disclosure records any longer than the six

years, and that's whether we keep the paper copy or we keep it electronically."

The Chair said, "We are talking about paper copies or electronic copies."

Knight agreed, "We are talking both."

Hughes asked, "Could he explain that statement?"

Knight said, "I have had a discussion with the state archivist, and when you define a record — whether you are talking about a federal record or a state record — it does not matter in what form it is. If it is microfilm, if it's hard copy, if it's electronic, if it's on CD, it doesn't matter. When there is a specific disposition schedule that is set on that record, it doesn't matter what form it's in, that is what we would go by."

Hughes summarized, "So, if you set it at 20 years, at the [end of the] 20 year period, it no longer exists. It's like the record never was. There won't be an electronic filing; there won't be a CD; there won't be microfilm. It is wiped out."

The Chair agreed, "Total expunging."

Hughes said, "I need you to understand that."

Knight said, "That is correct."

The Chair asked, "Are there any questions of staff on this proposal by the Commission?"

Pettigrew asked, "I would just like to know, do you think there would be anyone who would oppose this whether it be a candidate, an office holder, a lobbyist? Have you heard anyone express the position that they wouldn't want us to do this?"

Hughes said, "I think this is the first time it has really been brought up publicly — the length of time we are talking about. I was personally disturbed that we would be doing away with electronic filings that don't take up any room in our office; they are just online. I mean, I thought we could preserve the electronic filing, get rid of the paper and that would be great. But, according to the Archiving Commission, you don't do that. When you dispose of a record, it is the entire record. So, yes there may be objections. I don't know of anyone at this point, but there may be."

The Chair said, "Since this is the first time it has appeared on the agenda..."

Francis was recognized. “I would just like to state that perhaps it is time to do away with tradition and start keeping things for history as electronic files. Doing away with the paper — I totally agree that 20 years is a lengthy time, and it’s very ominous to maintain paper records for longer than that. But, the electronic records, this is a new era. The people in archives need to get on board, perhaps, with keeping things electronic without keeping them in paper. Thank you.”

The Chair said, “Thank you, Ms. Francis.”

Knight said, “Just to give a little bit of my background, too, not only do I have an IT background, but I also have a federal records management background. I’ve got about 20 years experience with that, as well. So, I brought that experience into play when we were discussing this, as well, especially on the electronic record keeping. I understand that it is something new that we’ve been exposed to over the last 10 years, and we had problems with it on the federal side, too, being able to understand that the paper and the electronic had to be treated the same way for holding purposes.”

The Chair said, “I take great comfort in the knowledge that we have on our staff someone with the experience that Master Sergeant Knight brings to the table. We are very pleased to have you, and we are very fortunate to have you to advise us on these matters.

“Since this is the first time this has appeared as an agenda item, it is my suggestion that we not take any further action on it. Let’s give people an opportunity to review it, put it on the agenda, if you will, please, Ms. Bryant, for next month, and we’ll discuss it at greater depth at that time.” There were no further comments.

Discussion on Whether to
Seek Representation by the
Office of the Attorney
General on Lawsuit

Next was discussion on whether to seek representation by the Office of the Attorney General in *Hargrave v. Ethics Commission of the State of Oklahoma and State Representative Rex Duncan*, Tulsa County District Court Case No. CJ-2009-02324, filed March 26, 2009.

The Chair announced, “As has been published in the media on several occasions, the Ethics Commission has been sued. We are now a defendant in a lawsuit that was filed in District Court in Tulsa County by a Mr. Hardgrave. We have been served. There is a co-defendant, Representative Rex Duncan, also listed as a defendant. When this first came to light, I directed staff to notify the Attorney General immediately, to provide the Attorney General with a copy of the pleadings which we have done.

“And, I asked staff to place upon the agenda an item for discussion as to whether or not the Ethics Commission should request the Attorney General to enter an appearance and represent us in this lawsuit.

So, that is where we are now, and we're ready for a discussion on that item. Does anyone have any thoughts?" There were none.

The Chair stated, "Well, I have a thought. Folks, we've been sued. We've got 20 days to respond. We have a meeting scheduled this afternoon with the Attorney General. At that time, we need to advise the Attorney General whether or not we want him to represent us. I suggest we do. Anybody have any comment on that?"

Bingham responded, "Mr. Chairman, I concur. I would like to point out, although we have an outstanding General Counsel, Rebecca Adams — and without a doubt she has the ability, to say the least, to defend us in this litigation — the problem is she just doesn't have the time. It is, again, another example of our very limited resources, and we cannot pull Rebecca away from the important work she is doing and ask her to be our litigation advocate. So, I'm in favor of asking the AG to step in and represent us.

The Chair said, "Thank you, Commissioner Bingham. I concur with you. We are very fortunate to have a lawyer on our staff with the capabilities and experience of Ms. Adams. I read her brief. It was in our packet. Very well done, very professionally done, Rebecca.

The Chair asked, "Does anyone else have any comments on this matter?" There were none. "The Chair will entertain a motion then that we seek representation of the Attorney General in this litigation which we are now defending."

Bingham asked, "Mr. Chairman — [Would that motion be a resolution then, Marilyn?" Hughes answered, "Just a motion to seek representation. Bingham responded, "Alright."] — I move that the Commission seek representation by the Office of the Attorney General in the case styled *Hardgrave v. Ethics Commission of the State of Oklahoma and State Representative Rex Duncan*, which is pending in the Tulsa County District Court and bears the Case No. CJ-2009-02324."

Pettigrew seconded the motion. There was no discussion. Roll was called for purposes of the vote. The motion passed unanimously.

The Chair stated, "So be it. We will be meeting with the Attorney General this afternoon, and we will request that his office enter an appearance and represent us in this matter."

Pettigrew asked, "Who will be meeting with the Attorney General this afternoon?"

The Chair answered, “Myself and the Vice Chairman if she would care to go with us — the Executive Director and our General Counsel — and any other member of the Commission who would like to go with us.

Approval of Minutes

Next was consideration of and discussion on whether to adopt the Minutes [both open and closed sessions] of the Regular Meeting held March 11, 2009. The Chair called for corrections or amendments to the proposed minutes. There were none.

Loy moved acceptance of both the regular and executive session minutes. Bingham seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously. The Chairman announced the motion passed and that the minutes and transcript were adopted and would become public record.

McKinney asked, “Do I need to vote on that since I wasn’t a Commissioner and here at the last meeting. Should I abstain from that?”

The Chair answered, “Commissioner McKinney is correct. You were not here, and so you have a copy of the minutes, but you were not here to determine whether or not the copy of that is correct. So, you are not required to vote, and you can ask that your response just be to abstain. Thank you for bringing that up. You are entirely correct.”

The vote then became four in favor with one abstention.

Ratification of
Expenditures

The Chair then called for consideration of agency expenditures for the period beginning March 1, 2009, through and including March 31, 2009.

Loy announced, “Mr. Chairman, I move acceptance and also thank staff for breaking out those miscellaneous expenses that we had last month in the amount of 1,000 or so dollars. I think it makes it a little more understandable.”

The Chair said, “Thank you, Commissioner Loy. Is there a second to the motion?” Bingham seconded the motion. The Chair asked, “Is there any discussion?”

Pettigrew stated, “I had some concerns about the fact that, on the first page under Administration/Policy Review/Investigations - General Operations, we had a budget of, for instance, interagency payments of \$4,000, but year-to-date expenditures is zero. It seems to put everything out of whack. According to staff, we are using out of another fund until it is used up and then moving over to this fund, and I am not an accountant, but Darey is, and I wonder if this is common practice or should it be something where if we are going to budget it for a certain amount, shouldn’t we be using it out of that fund and not out of another?”

Bryant asked, “Can I speak to that? Most of our printing is done at the end of the fiscal year when the rules are passed, so we haven’t done much printing this year yet. So, that item is \$4,000 for printing. And, we’ve done some printing for school boards and municipals and other printing, and that comes out of Registration Services. But, the printing of the rules comes out of the Administration budget, and that won’t be until later in the fiscal year.”

Pettigrew asked, “But, is it true that you are doing any of the printing that we are doing on the first page out of another fund? That is what I was told.”

Bryant said, “No.”

Hughes said, “I may have misrepresented that. What she had told me was that she uses the funds out of Registration and now she has explained. And, probably I didn’t convey that to you that that is for the municipal printing, and that is specifically from Registration Services. And, then she saves the amount budgeted in Administration for the printing of the rules at the end of the year when the amendments are done.”

Pettigrew said “Okay. I think that clarifies that.”

Bryant said, “I know you had another question about the risk management, the liability insurance. We haven’t been billed for very much of the liability insurance yet this year, but we will be by the end of the year.”

Pettigrew said, “Okay.”

The Chair asked, “Is that an annual billing?”

Bryant answered, “There are different types of insurance. There is tort liability, there is our personal property liability — different types of insurance — and they bill us when they are ready to bill us. And, we haven’t been billed for the largest amount yet this year.”

The Chair said, “Thank you, Ms. Bryant. Is there any further discussion?”

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

The Chair asked, “Does anyone have any comment or discussion?”

Hughes answered, “We have nothing to report to the Commission at this time.

Administrative Report

The next item was the administrative report. Hughes said, “We don’t have any changes to the administrative report previously sent.” No action was required.

Pettigrew asked, “Are we allowed to discuss the administrative report?”

Hughes replied, “...anything that is not confidential.”

Pettigrew said, “Because of the comment of Mrs. Francis which I certainly appreciated about our need for funding — and I know that there have been some concerns about whether or not we could actually get more revenue in if we took over and were allowed to accept the late fees — I still think as a matter of principle, we as the Ethics Commission should be allowed to keep that because it would go along with the concept that was brought up earlier by Mrs. Francis of separation of the Legislature and the Ethics Commission.

“Right now we do all the work and are at least two years behind on late fees, collections and sending notices. And, even when we get that — and I understand Patti sometimes has to work very, very long hours to get it in — we don’t get the money for it. It goes to the General Fund. Mr. Chairman, I just feel that we should not dismiss too readily the idea of trying to capture those late fees because whether or not we get more money, I think it is a matter of principle that these funds that we work so hard to collect are given to another source.”

The Chair said, “Intellectually, emotionally and philosophically, I could not agree with you more. Professionally, I have a concern. But, I will defer that concern until I hear comments from the other members of the Commission. Mr. Loy do you have any comment on that?”

Loy said, “Commissioner Pettigrew’s comments make sense to me, but in looking at the estimated cost, it looks like a wash to me anyway. I guess I’m surprised that there isn’t some kind of a tickler file in the computer system. We ought to ask these guys to give us their email address and once a week we can send them some kind of a notice on their email.

“Yesterday, coming through the Tulsa area, our radio was interrupted by some kind of a tornado alert, and it was a blast and another blast and a few more blasts and then a message. It looks like we could

interrupt somebody's email and just blast them with it. I know that's facetious, but there are ways to contact people. I think the idea of spending \$30,000 to collect \$30,000 doesn't make much sense. But, creative people can learn how to do things and make things happen."

Hughes interjected, "I'd like to review the history a little bit. In 1986 the statutory Ethics Commission was formed. At that time the Commission could keep the late fees. In 1988 the name was changed from the Oklahoma Ethics Commission to the Oklahoma Council on Campaign Compliance and Ethical Standards. At that time, the law was amended so that the late fees went to the General Fund. When the Ethics Commission Act was repealed in 1995, then that statute was reenacted under another section and retains that language where it goes to the General Fund.

"That's one of our staff suggestions on the list. If the Commission wants to consider that the funds should go to the Commission rather than the General Fund, then it would need to be a statutory change, and it would be a request to the Legislature to make that change because the only authority the Commission has to collect late fees arises from that statute."

The Chair surmised, "So, it would take a statutory change by the Legislature."

Hughes answered, "Yes."

Pettigrew said, "I do not know how they would respond to that. I know some legislators would support us in that. As I said before, it is a matter of principle. It is also a matter of principle to me that we have so many people who are not paying their late fees. I think when we are not enforcing those, it gives the indication to the people who are supposed to comply that they really don't have to because nothing is going to happen to them.

"And, I see by the report that Patti presented and prepared for the House Budget Hearing in 2006, the late fees assessed was over \$93,000. We actually collected \$12,900. And, FY-2007 late fees assessed is \$68,000 and we collected less than \$25,000. This implies that you really don't have to pay your late fees. And, there is something morally not right about that.

"So, once again, I just don't want us to say, 'Well, we're too busy. We can't do it.' There are two reasons why we need to keep working to find a way, and that is, 1) perhaps we could get it moved to the Ethics Commission and 2) it would be a more stern reminder that you are going to have to pay your fees."

The Chair said, "Thank you, Dr. Pettigrew. I couldn't agree with you more. It is so ironic that these late fees and other assessments do not come to the Ethics Commission but go to the General Fund. And yet, at the same time, we are unable to collect these fees because we don't have the staff, we don't have the time, we don't have the personnel. And, the reason we don't have the time and the personnel is because of inadequate funding. So, it is full circle.

"The other concern I have is for a professional reason, and it goes all the way back to the dawn of antiquity, back in the 1960's when we endured in this state the so-called judicial scandal that resulted in a complete revamping of our system of jurisprudence here in Oklahoma. Prior to that time we had the old Justice of the Peace system.

"Some of you who are almost my age may recall that. When the Justice of the Peace system was in place, the Justice's fees were determined in large measure by the decisions that he made in cases before him or her. That bred corruption, obviously. Now, this is not exactly that kind of a situation. But, I do have some pause, some hesitation as to suggest that the agency charged with the collection of these fees would have them come directly through the coffers of that agency.

"I think it should. I think there is certainly a compelling reason why it should, and you've addressed that, Commissioner Pettigrew. But, I do have that reservation. It would require a statutory change, according to the Executive Director, and I can see some real merit to that.

"What is the pleasure of the Commission? Commissioner McKinney, I know this is a matter of first impression for you, but you bring to this table a great deal of experience in financial matters for which it will be very beneficial to us. Do you have any comment about this?"

McKinney responded, "For those who don't know, I am a banker by education. And, I've also been in the banking business for about 40 years. But, I think from the standpoint of the big picture, it would be easy, and I don't disagree with you, for the money to come to the Ethics Commission.

"But, I still think you are dealing with the Legislature and the Treasurer. And, a lot of times in the state, I'm dealing with just the OBA and the Banking Commission. The bank pays its fees to the Banking Commission, and those fees you would think would go to the Banking Commission. But, they don't. They go to the general coffers.

"I think that there may be a way if you had to go by statute or through the Corporation Commission, but you might have that money go into 'general coffers' but be segregated out and then come back to the

Ethics Commission. Because, if you don't, you are mixing oil and water."

The Chair said, "That's right."

McKinney said, "I don't think they would do that. They would be more apt to approve that if 'X' number of dollars goes into the general coffers, then they would bring that money back."

The Chair said, "Those are good thoughts, and we appreciate that. This is something that I think deserves some further consideration and discussion."

Representative Mike Reynolds ["Reynolds"] was recognized. "Thank you Mr. Chairman. I had just a couple of thoughts as a private citizen, not as a legislator. That is, the internet, I think, has been a wonderful tool for you guys. And, I think many members are fearful that violations that they may have committed would be posted on the internet.

"And, it would seem to me that you all might be able to do that today without adopting a rule or anything and publish who has received a late fee, when they got it and have they paid it. That might go a long ways because what I hear is you are having to do work to collect these late fees. And, what you want is you don't want people to file late. And, I think that could be a huge deterrent to people filing late when they know it is going to be posted publicly right there on the front of your website.

"So, I would just suggest that you might want to check with your programmer and see if that might be something that is simple to do, that you could do rather quickly, and you might see a very quick turnaround in the situation."

The Chair said, "Thank you, Representative Reynolds. Your comments are always well taken, and we appreciate you being here today. This is a matter that I think deserves some discussion, and I'm going to ask Ms. Bryant to put this on the agenda for further discussion at our next meeting. We can't take action on it today, of course, because it needs to be heard by the general public and comments received from the general public. So, let's put this on the agenda for next month, and we'll give it some further study at that time."

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 the items set

forth at this place on the agenda were made confidential by law. She stated, "I would like to add, particularly since we have litigation listed, that it is the opinion of your General Counsel that disclosure of these items would seriously impair the ability of the Commission to process this claim or conduct a pending investigation or discuss our litigation or proceed in the public interest. It is therefore my advice that the Commission go into execution session for the limited purpose of these listed matters."

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

Pettigrew said, "Mr. Chairman, I would move that we take the following action on Informations that are listed in the public agenda: as to IV-2009-001, that we continue the matter to our next regular meeting; as to IU-2009-002, that we continue the matter; and I [further] move that, with respect to Information IU-2009-003, the Commission find that information it has received provides an adequate basis for the belief that one or more violations of the Rules has occurred and that it occurred all, or in part, in Oklahoma County, Oklahoma, and that the respondent committed the violation and that an investigation is warranted and that the Commission open such investigation; that use of one or more subpoenas is necessary and that the Commission both authorize and issue one or more subpoenas as may be necessary; and that the respondent be notified".

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

New Business

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

The Chair said, "Again, before we adjourn, we want to welcome aboard Commissioner McKinney. He brings a wealth of experience and background, and we will certainly benefit from his appointment. We are delighted to have you with us. Bob, I can tell you that I'm sure you've done a lot of things during your stellar career, but I don't think you'll

find anything as ultimately rewarding as working with this body, and we are delighted to have you with us.”

Next Meeting

The Chair announced the next meeting was scheduled for May 8 at 10:00 a.m.

Adjournment

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

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

The Chair then declared the meeting to stand adjourned.

MARILYN HUGHES, Executive Director

Approved On Behalf Of The Commission:

JOHN RALEY, Chair

MH/pb