

MINUTES OF SPECIAL MEETING  
at the  
PERFORMANCE REVIEW HEARING  
of the  
ETHICS COMMISSION  
STATE OF OKLAHOMA  
held  
JANUARY 14, 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 forty-eight (48) hours in advance with the Office of the Secretary of State, a special meeting of the Ethics Commission of the State of Oklahoma ["Commission"] was called to order on Wednesday, January 14, 2009, at 8:00 a.m. The Honorable Guy Liebmann ["Liebmann"], Chair of the Appropriations Subcommittee on General Government & Transportation, presided over the hearing/meeting which was held in Room 108 State Capitol Building, Oklahoma City, Oklahoma. The Honorable Ken Miller ["Miller"], Chair of the House Appropriations Committee, also attended.

Determination  
Of Quorum

Roll was called to determine the existence of a quorum for the transaction of business. Commissioners present were: Vice Chair Jo Pettigrew, Don Bingham, and James Loy ["Loy"]. A quorum of qualified members was found to exist and the special meeting and Performance Review Hearing before the Appropriations Subcommittee on General Government & Transportation went forward.

Commission staff members present were: Marilyn Hughes ["Hughes"], Executive Director; Rebecca Adams ["Adams"], General Counsel, and Patricia Bryant ["Bryant"], Principal Assistant.

Hughes

I'm Marilyn Hughes. I'm Executive Director of the Ethics Commission. Since we made introductions, another commissioner of ours came in — Don Bingham, former chairman, and now commissioner.

I'd like to start off by telling you a little bit about the Ethics Commission. It was created by Article 29 of the Oklahoma Constitution. It has five citizen members — unpaid. They are given

the duty to adopt rules of ethical conduct for state campaigns and for the ethical conduct of state officers and state employees.

Those Rules are codified in the statutes, and they are submitted to the Legislature once each year. Amendments to the Rules are submitted after the original set. The Legislature has until the last day to disapprove the amendments. If they're not disapproved, or the disapproval vetoed by the Governor, then they go into effect. The veto can be overcome by a two-thirds vote.

The Commission also has the mandated duty to prosecute violations of those Rules. They are codified in Title 74, Chapter 62, Appendix, as Section 257:1-1-1 et cetera. The five members — no more than three can be of a political party — represent the five congressional districts in Oklahoma.

We had presented to us last week a set of questions that we have been working on. We certainly have staff notes on them, but we will not be presenting written answers today. Some of our answers are going to be dependant maybe on your questions today. But, those answers will be ready as soon as possible. They need some refinement.

We appreciate the fact that we've been given the opportunity to respond to them. With that, I will open up to whatever questions you may have.

Liebmann

You know, I want to say to start with, I've been filling out reports for 14 years, ten years on the city council and four years with you. Yours are the easiest, now that you have them computerized. It's "slick as a whistle," I tell you. I just love it. You've done a great job on that.

Hughes

Thank you. We appreciate that. We've been online since 2006 with these, and we're very proud of the fact that those using our system brag on its integrity. A lot of states have electronic filing systems that these groups, these think tanks, will not use the data from. They still get the paper copies because there's no integrity to the data. Ours has maintained the integrity.

Liebmann

Well, you've done a good job. Chairman Miller, I'm recognizing you for questions.

Miller

I'd like to make an opening statement if I could first. It is a little bit unusual that I sit in on a subcommittee meeting — I and my vice chair. We're doing so really to continue a dialogue that we started some months ago. And, this is the appropriate venue to continue that conversation.

Some months ago, I attended one of your meetings, and we had a discussion about a request for additional funding. And, I recommended some documentation be provided to support that request, and the Commission complied with that request in the Memorandum of Support.

At that time I communicated to the Commission that we would respond to that Memorandum, and then we responded in the form of those questions that we gave you last week. And so, that's why I'm here — to continue that dialogue. We are going to be scripted at first. Then, I believe, the Chairman's going to open up the questioning. But, we wanted to provide you the utmost fairness in providing you with those questions so you would have the opportunity to respond. We're going to follow those questions that we submitted.

I also want to speak a little bit to the nature of the duties between the two entities — that being the Legislature and the Commission. I believe we're both in the accountability business. You guys are constitutionally passed to hold us accountable as public officials on our campaign spending and so forth. We're constitutionally passed with holding all entities of Oklahoma government responsible for the spending that they do of the taxpayer dollars. And so, in a lot of ways, we have similar duties of accountability.

I know that, because of the fairness that the Commission exercises — and, I certainly believe that they do in review of potential violations — that you all would not hold any Legislator or any other public official to a different standard. You hold us all to the same standard. And, I know you would expect us to do the same thing to all of the entities under our purview.

We have that responsibility to hold all government entities to the same level of responsibility and accountability even though it is at times uncomfortable. And, this is certainly probably one of those times.

I also want to say that those of us in the Legislature — and, I believe this truly — want the Ethics Commission to be fully funded to carry out those constitutional duties. I think that is sometimes mischaracterized because it makes good copy, but I truly believe that we want you to have the funds necessary to carry out your duties.

The vast overwhelming majority of the Legislators and public officials that I know work hard to comply with the Rules that you all set forth. And, those of us that do so want to make sure that those that do not are held accountable for that. And, you need the money to do that.

There is going to be a disagreement at times over what funding is full funding, and it's not just with this agency or this entity. It's with every government entity that we oversee. I haven't dealt with one yet that didn't request additional funding, and it's our responsibility to critically review those requests and grant what is needed to carry out their functions.

I also want to speak to the nature of the relationship between the two entities — the Legislature and the Commission. I think historically it's been one of acrimony. I don't think that should be the case. I truly believe that the two entities should have a lot less acrimony and a lot more positive relationship than we do have. And, I'm committed to helping to change the nature of that relationship.

I believe that we have started to do that. And, I have spoken many, many times the last few months with several of the commissioners. And, they have worked with me to change the nature of that relationship. I've gotten to know a few of them, and I truly believe that the Commission is doing their upmost to do the best job that they can in a fair way for the people of Oklahoma. And, I respect that, and I respect the individuals that are serving on that Commission.

So, I want us to work hard to nurture the relationship. I believe that we want the same thing at the end of the day. We want the people of Oklahoma to be served well, and they want us to be held accountable, and we want each other to be held accountable. So, I look forward to improving that relationship as we have already started to do.

That also speaks to the tone of today's meeting. And, I can't stress enough how I want the tone of today's meeting to be positive. I

don't want this to get into a back-and-forth. There are tough questions that must be asked — that have to be asked so that we do our job correctly. But, that doesn't mean that can't be done in an agreeable manner.

So, I want to caution our members to please do this in a respectful manner. I know that they will. I talked to several of the commissioners yesterday. I wanted to make sure that they knew the spirit that these questions were delivered in. And, they did. They felt the questions were fair and took no offense, so I wanted to touch base with them yesterday. I did so, and I am pleased that the questions were received in the spirit that they were.

I will go ahead at this point, Mr. Chairman, if you would like me to get into the questions.

It might seem a little bit monotonous, but we want to go by the order given you, so I will read the first question, Ms. Hughes. In its analysis of future state agency funding needs, the Legislature relies heavily on the budget request document and when the agency presents a prioritized listing of any additional funding it is seeking and justification for the new funds. The Ethics Commission FY-09 document lists increased funding for operating expenses, additional office space and improvements in information technology as the agency's top three budget requests. Salary increases for existing staff and the hiring of additional FTE make up the final four items in this prioritized listing.

Why did the Commission employ an estimated \$112,000 of the \$150,000 in new FY-09 funding to provide 30 percent raises to all but one of its employees, instead of applying the majority of the funds to the top three priorities as listed in the agency's FY-09 Budget Request document?

Hughes

If I could, I'd like to address the top three priorities first. The first one was an increase in operations. In FY-09, our operations were \$43,100, as budgeted. In FY-08, that was increased to — I'm sorry, that was in FY-08. In FY-09, it was increased to \$82,257. That's an increase of 90.8%. We only received a 30% increase in funding, yet we were able to increase operations by 90.8%.

Our second priority was an increase in office space. Perhaps this was a misplaced priority, because unless we got the new FTE,

there was really no need for additional office space. We certainly can use it for our files. We are in the hallway. We're in with the Secretary of State in sharing half a storage room which she has been kind enough to share with us. But, without the new FTE, there's really no need to move and then have to move again later if we are granted new FTE. So, that one was put lower on the scale.

The third priority was information technology improvement expenses. We budgeted for seven work stations. All seven have been replaced in FY-09. We budgeted to secure a telecommunications remote access systems. Charles Knight is our new Information Systems Network Administrator. He disagreed with the former head of IT, Martin Miller, who requested this. Knight felt the commissioners should not go in this direction, so that program was therefore cancelled. Knight came on board in June of 2008.

The next one was to secure anti-virus update server expenses, \$2500. That software was updated in FY-09. The next one was in-house secure email service expenses. That expense is paid monthly to the Office of State Finance, so it's in the budget. The next item was the server. We were going to extend the warranty on the current server expenses. The server is not currently being used. Instead, we are going to be purchasing new software in FY-09.

The next one was to purchase a new server and to use the present for disaster recovery expenses. Charles Knight again prefers to do weekly backups of all data rather than to store the information on a new server. He does not feel a new server is cost-efficient. And, the last was scanning equipment which we have purchased. The staff is conducting the putting on of county reports on our website using this system and also use of our content management system we have through OK.gov.

So, all of the items that we budgeted for in FY-09, we have either met or changed the priority in there because of what was recommended by our IT Director.

The last three items were FTE, and those were not granted. We were left with the same number of FTE, so we had the excess, and that was used for salary which was performance management. And, it certainly was more than what we had budgeted, but we had extra funds from \$50,000 vetoed by the Governor that was available to the Commission.

The commissioners felt like that the staff had been underpaid for a number of years. We had been budgeting for performance review increases since the law took effect in 2001. Each year would have represented a 4.28% increase which is less than the 5 or the 10% that is by statute. We felt like it was within the bounds.

Miller

Follow-up, Mr. Chairman. I believe part of the answer was that the number one, two and three priorities were contingent upon granting of the five, six and seven priorities.

Hughes

No, sir. The first priority was operations. That was increased 90.8% in FY-09.

Miller

When I add up your one, two and three funding priorities, I get \$157,000 which is more than the total increase in your budget of \$150,000. The performance pay salary increase was \$45,000, yet \$112,000 was spent. And, certainly, I think you have to know that the Legislature has to rely on these prioritization documents that you do. And, if they change midstream, I don't know how we can have any level of confidence that what you asked for is what you're going to spend money on if they change midstream.

Hughes

Well, I would have to emphasize that there was a lot of cost-saving especially in the IT division because of our new IT Director. We ended up spending closer to \$11,000 rather than the \$44,750 budgeted. And, we are doing the same things that we budgeted for but at a lesser cost and a different way.

The operations — certainly, we have budgeted a lot more than the 30% increase in that area. Space, as I said, was a non-consideration because of no new FTE, and it would have been not cost-effective to make two moves.

Miller

I understand, but in your description of your operations funding change and your funding change for increased office space, there is absolutely no mention whatsoever of FTE being a requirement for needing that space.

In fact, it says otherwise. It says, "The purpose of this funding change is to secure funds to double the size of our existing office space. We intend to increase the space for files and supplies, to provide more public access to the files and computer terminals to view reports filed online, to provide a conference room for staff meetings

and conferences, and to respond to counsels, and to provide a break room for employees, and lastly, to hire additional employees.

So again, it was the last priority listed in your description of why you needed additional space. And, I can add a lot of square footage in there when I add up space for files and supplies, public access to files and computers, a conference room. That's a lot of square footage.

Hughes

Yes, it is. And, we were hoping to get that extra footage. We don't know whether the Legislature, as has been communicated to us in the past, wants us to remain in the Capitol. We had thought that we could get the former Attorney General's area. But, that space was used for other purposes and then an art gallery.

We had thought that the former Central Services area we could obtain, but we did not get that either. We are certainly looking at other areas in the Capitol, but we have not been given any other area to consider moving to. If the Legislature wants us to remain in the Capitol, then we're going to have to have the area. If we're going to have to wait for the judicial system to move across the street, then we need to know that, too.

But, to spend the money on a new office, redecorate, all of that right now, before we have the FTE, before we know what we're going to get, would seem to be a waste of money when we had the other need.

Miller

You're speaking in percentages on the operating expense increase of 90%, but yet it was hard dollars that were requested of \$75,000 for that. I remember after the 30% increase in funding was announced, it wasn't received as it would have been, I think, by some other agencies who could have received a 30% increase. And, I think there was actually disappointment with that 30% increase. If you were able to increase your operating expenses by 90%, how is that a disappointment?

Hughes

Part of that money came from not having been able to hire an IT Director for some of the year, so we had some carryover. We would have probably still been able to increase it around 43%, but with the carryover from the IT Director, we were able to up operations to a 90% increase.

Operations is extremely important especially in an election year. This is not an election year, but we will use those extra funds at the end of the year to do all of our printing to get ready for the FY-10 elections.

Miller

I guess, just going forward, point noted that it gives us a hard time to have confidence in your budget request when you change what you're going to spend the money on after we've granted the approvals based on this prioritization

The next question I have is, was the decision to radically change the agency's spending made by the full Commission. If not, please explain. Were all the commissioners aware and supportive of this change. If not, would you explain that?

Hughes

The commissioners supported policy that was adopted in 1995 — that was adopted after repeal of the statute that originally was passed by the Legislature in 1986. It established the duties, the salary of the Commission director at 95% [should have been 100%] of the district attorney's salary. The commissioners also adopted a policy to pay the General Counsel 95% of that. Money was never appropriated for those.

They re-adopted the policy in 2009. The salary increases certainly don't rise to that level, but they do bring it closer. Even with that, the three employees — also, part of that motion was that the Executive Director sets the salaries of the staff and marketing based increases were given to the staff — even with that, the top three salary increases still leave those three people much lower than the marketing average.

Miller

There are a lot of state employees that did not get a raise last year. And, I think, where it surprises me, we're at a 30% increase. I guess I'm a little bit market-based myself on salaries, and I tend to think if someone is working in a job, then we are meeting their market minimum for pay. And so, I wonder if these 30% increases were based on a turnover rate, and if we're able to fill jobs, how are we not paying enough to attract someone to work in those jobs?

Hughes

We do not have a heavy turnover. We have had some long term employees which we're very proud of — which allows us to continue the high caliber of work we feel like we produce. And, we have not had pay increases in the Ethics Commission for over ten years

other than the across-the-board increases that are given to all state employees. I doubt that there's another agency in state government that can say that.

As to what the Commission has been appropriated for salary increases, it has not been there. The money has not been there. In fact, there were several years, when I was being paid like a DA, that I tried to allocate some of the money that I was being increased, because they were not tied to statute, to some of my employees — and could not do that because it was set by statute.

Even this last year, which was called a stand-still budget year, all judges and all DAs received a 5% increase, so it was not a stand-still budget for them.

Miller

You are right. And, to be consistent, we did reject that in the Appropriations Committee. But, it was not agreed to on the other side of the rotunda. So, point well made, and we tried to keep it consistent on the judges, as well, but the other body adopted that.

I think I've already covered the question why didn't the Commission notify the Legislature of its decision to change its spending priorities, but you might speak to that, as well as the next question, which is does the Ethics Commission Budget Request document, as we've been discussing — the prioritization is something that we rely heavily on — and do they not feel a sense of responsibility to work with the Legislature when they change the order after they've told us it was going to be otherwise?

Hughes

I would have to admit that I was not aware of the duty to report to the Legislature when spending priorities were changed. As to — what was your second question? I'm sorry.

Miller

What if the importance of the document was understood, ...

Hughes

Oh, I certainly consider the document important. And, frankly, I consider last year a mistake in that the FTE were not the first three priorities. And, that mistake has been corrected in the FY-09 [should have been FY-10] budget request. Those five FTE — and they are the first five priorities — our Vice Chairman, Jo Pettigrew, has asked that consideration be given to increasing the FTE regardless of whether funds are appropriated in the next year for those FTE. Because if we

get the money from whatever source, we would certainly use it for additional FTE if we had them — if we were able to by statute.

Miller

I would certainly hope that the performance salary increase would fall down on the list after last year.

Hughes

It will not be on the list.

Miller

As far as your reporting back to the Legislature on changes on spending priorities, I think just to be reasonable, certainly minor changes would not be expected to be reported back. But, when you allot \$45,000 for performance pay increases, and you spend \$112,000, that is a major, major change. And, I think that would be something that the Commission might consider reporting back to the Legislature. When such a major change is undertaken in their spending...

Hughes

I would take that on myself as a duty, and I will bear that in mind in the future.

Miller

I believe I know the answer to the next question, but it's been submitted, so I'll ask. Would the Commission consider rescinding the salary increases and applying the additional funding to your top priorities as submitted to the Legislature, \$75,000 for operations, \$37,000 for increased office space and \$44,750 for technological improvement.

Hughes

I believe the Commission, as least the ones that I've talked to, believe that the priorities have been — the first three priorities have been met as far as they can be, other than for office space, and that the decision on the salary increases was a good decision and would not consider changing it.

Miller

Just for the record then, I'd like to state that the Legislature has met your needs for operating expenses, met your needs for technological improvements, has far surpassed the need for performance salary increases. And so, I'd say we were doing pretty good. I would like to see that publicly reflected more than it has been in the past.

The Honorable Scott  
Martin ["ScMartin"], Vice  
Chairman of the House  
Appropriations Committee

I appreciate both Chairmen allowing me to participate in this discussion today. Director Hughes, I thank you for being here. I'd like to echo Chairman Liebmann's comments about the quality of the website and reporting. I direct lots of my constituents, lots of my

donors to the website so they can find out who donated to my campaign, who is participating in the process. I think it's wonderful that this resource is there for citizens and the public to look at and to be aware of. I think the more light that is brought into that, the better. So, I applaud you for having that there and would encourage you to — any improvement you could make to the website — I would encourage that.

I'm going to continue. Chairman, if you'll allow me a little latitude. Thank you very much. Next set of questions here.

An argument advanced throughout the memorandum you presented is that the agency requires additional funding because its workload has "increased at least five fold [since] the Constitutional Ethics Rules took effect in 1994." Significantly, part of that increase is explained by the fact that you Director Hughes type virtually every document used by the commissioners in their consideration of Rules changes.

The first questions is, does staff prepare formal Fiscal Impact Statements to assist the commissioners in their consideration of proposed Rules changes? That is to say, does the agency calculate the potential costs in time and materials related to a change in the Rules? If so, is the Fiscal Impact Statement made available to the Legislature?

Hughes

The answer to that is that the Commission's Rules are not APA rules. They're not subject to APA requirements. They are constitutional rules, and the procedure is set up by Article 29 of the Constitution. The only requirement is that they hold a public hearing — not even two public hearings — just a public hearing. That is certainly met. There is no fiscal impact statement prepared.

ScMartin

Would that be something you might consider in the future because I think for us to evaluate whether or not we're going to approve or disapprove a Rule that the Commission comes up with — it might be helpful for us to know the financial impact it's going to have so that we can better fund your agency.

Hughes

Would you consider FTE for us to prepare such statements and to back up that kind of work? Right now, I have a lot more duties than to prepare amendments to the Rules. And, we certainly testify in meetings as to what the impact will be on the staff. And, different staff members have testified before the Commission as to what it will do to

their workload. But, we do not prepare formal statements. That would be another duty on top of an already very overworked staff especially during election cycles.

ScMartin

You can see, though, as the Commission and staff propose Rules, they're going to impact you directly. You can see where it might be helpful to know the financial impact that's going to have before those Rules are adopted so that you don't have to require more FTE.

Hughes

There is certainly financial impact. There is also the impact on the public because the public has come to expect a certain degree of disclosure from the Commission. And, the increase in workload has arisen, in large part, because disclosure is so much more required and available to the public. That increases the paperwork. That increases the amount of time that staff spends teaching new candidates how to fill out the paperwork, what it is, the fact that a transfer is not a regular expenditure. It's a transfer to another committee.

These types of things increase the workload, but it is a worthwhile thing for the high caliber of information that is available to the public. I don't think we can now ask the public to deal with less disclosure than they currently have in order for us to not have to increase our workload or FTE and to provide you with financial statements about what it costs for them to have better disclosure.

ScMartin

I'll move on to the next question. Among the initial Constitutional Rule changes was a reduction in the threshold for identifying individual contributors to state campaigns from \$200 to \$50. Please explain the rationale that informed this significant reduction in the reporting threshold. How did you arrive at the \$50 figure? Were there complaints from the public as far as the \$200 limit goes?

Hughes

Frankly, the Commission was looking at a model ethics act. It was adopted by the Council on Governmental Ethics Laws in 1990 prior to the Commission becoming constitutional. So, they were going by this, and it had a threshold of \$100.

In 1992, when the Commission submitted its first set of rules, they submitted it with a \$100, I believe, threshold. I'd have to go back and look at that because those rules were disapproved. But, in the

meantime, the David Walters Multi-county Grand Jury came out with their recommendation that the threshold be reduced to zero.

Those rules having been disapproved, the Commission looked at the issue again. There was testimony that zero was not workable — that you needed, at least in Oklahoma, the practice of a punch bowl — that throwing \$20 or \$5 in should be allowed to continue. And, so a compromise was made to \$50 — which reduced the across-the-board threshold to \$50 in the 1994 Rules which were the first set to become effective.

Another question you asked, and maybe I'm anticipating, is how does that compare with other states? Benchmarking surrounding states, Texas, Kansas and Arkansas also have the same threshold of \$50. Arizona is lower at \$25. New Mexico is zero. Missouri is higher at \$100. I have in this questionnaire — which you will get — the answers to all of the states. And, you'll see that some are \$100. Some go above that. I haven't done an average, but this information is from 2000. I don't have a booklet from the FEC any more recent than that, and I didn't have much time to prepare.

ScMartin

Before we get there, do you know the threshold for the county and also federal?

Hughes

The county is \$200 which is what the statute was before the creation of the Commission — actually over \$200 — and federal has always been over \$200.

ScMartin

I'm glad you brought up the surrounding states because I think that's relevant to our discussion — how we compare ourselves to the rest of the country. In preparation for today, I've looked at a study done by the UCLA School of Law, Campaign Disclosure Project. Are you familiar with it? [Hughes answered "Yes."]

I thought it was interesting that — and, this goes to what I know you're going to give us — but, I thought it was interesting that 21 states employ a threshold of \$50 or less; 18 states set the threshold at \$100, seven are at \$150 or more, and so it kind of goes across the board.

In relation to that study that UCLA did, they ranked states as far as their disclosure laws, and you probably know Oklahoma is ranked 27<sup>th</sup> — our ranking there. In this report, or in this study, are

you familiar with how they, what weight they put on the amount you pick — whether it be \$50, \$100, \$200 or higher — where that falls in the ranking or how that may change the ranking?

Hughes

I don't think that the threshold is a consideration in how they rank. I could be wrong, but I think that they rank according to what information is available. And, Oklahoma has continually ranked low because we do not require the name and address of vendors, of expenditures at whatever the threshold is. We don't require that. That is an amendment this year before the Commission. But, it hasn't been available, and they've always — continually on our personal evaluation — mentioned that we can't rise a certain level until we correct the law.

As to the other, I think it's more what is available in terms of occupation and employer, name and address of contributors, same think on expenditures. But, the quality of the information, the threshold may play some part, but I don't think it does.

ScMartin

As far as in this report, in the top ten, I believe, there were six of the states employ a \$100 threshold, one has a \$300 threshold, and three are on or below \$50.

Hughes

As I say, I don't think the threshold is relevant.

ScMartin

Okay. That might be something for the Commission to explore. Because certainly, it probably uses a lot of staff time in documenting and making sure that those of us who have \$50 or less for contributors.

Hughes

That is a policy decision for the Commission.

ScMartin

Okay. In that regard do you know in this last cycle what percentage of all contributions — maybe you can give me an estimate; I realize this is a lot of numbers, so I apologize, but — the estimate of what percentage of contributions that were under the \$200 level?

Hughes

I could not tell you. I'm sorry.

ScMartin

Do you happen to have an estimate of maybe the average contribution in Oklahoma?

Hughes

No. Really, it would be a guess. I would say that it may be

lower than in some states. Maybe those people who download our information into a, what is it called, a data dump, maybe they can figure out that information, but I'm not that sophisticated on the computer.

ScMartin

Fair enough. Maybe it might be something you could look into. With that, going on, Mr. Chairman, in your Memorandum one of the items you pointed out in lowering the disclosure threshold, staff had more contributors, staff had more increased review and spot auditing for compliance and enforcement. You mentioned it also results in a lot more paperwork. So...

Hughes

Well, you have to realize that the threshold change occurred in 1994. So, we've had this in place for 14, going on 15, years. And, the disclosure before then was a one-page document, which is what the county disclosure is now unless they do attachments.

But now, we have the schedules, and that creates the numerous... And, we also have occupation and employer which the county level does not. We have a lot of disclosure that is available to the public that is not available under the old statutory scheme.

The Honorable T.W.  
Shannon ["Shannon"]

I'd like to continue the questioning on Line 6. Is it not true that the \$50 reporting threshold makes for a great deal of more work on the part of the staff? By how much would the agency's workload be reduced if the threshold was simply raised?

Hughes

It certainly would be reduced, but, as I say, the public information would also be reduced. Really, we can't comment because that's a discretionary decision of the commissioners wherever the threshold is set. Right now, the system is based on \$50. And, we input probably 25% — and that's a guesstimate — of reports that are filed by paper.

A lot of people who don't reach the \$20,000 threshold file online anyway because, as we mature in the computer age, people are more familiar with using computers, and they don't mind, regardless of whether they have a big campaign or a small one. But, when we first began, we had a lot of people who didn't have computers, who didn't have internet access, and they filed by paper. So, we input the data. We're still inputting the data for those who file on paper. But, it reduces each time because more people are filing online.

Miller

If I could interject, Mr. Chairman, a point of note. I believe I heard testimony that it, the threshold, was irrelevant. But, yet, in your Memorandum you say it produces a great amount of burden on the staff. If it's irrelevant, and it produces a great amount of burden on the staff, and it's producing an outcome, why are we doing it?

Hughes

My testimony was that it was irrelevant in the disclosure study done by the California group. I did not say it was irrelevant as to staff work. And, it certainly is relevant.

Miller

But, what I'm saying, if it's not relevant to increase your ranking as far as campaign disclosure goes, if it's not helping produce an outcome, if it's not making us more accountable, if it's not more disclosure, if it's not helping, then why are we creating this burden when you are overburdened and don't have enough resources?

Hughes

You're asking staff. All we do is execute what the will of the Commission is. It's up to the public and the Commission to determine what level of disclosure they want. When the threshold was originally being discussed, the Multi-County Grand Jury, Common Cause Oklahoma, wanted it at zero. I don't know where they want it now. But, that's not my decision. All I do is carry out whatever the vote is.

Miller

Right, I understand. And, that's speaking to the point that we're trying to get at today. When we're making rules, we're making rule changes, let's make certain that it produces a positive outcome. Time and resources are precious to the staff, they're precious to you, they're precious to the Commission, they're precious for public officials. If they're not, if rules and rule changes are not producing positive outcomes, let's critically analyze whether or not that rule or that change should be made.

We've got to make the most of the taxpayer dollars. And, if we're not getting anything out of a rule change that would produce better government, it should not be done.

Hughes

All I can say is our surrounding states have it at least that low or lower.

Shannon

I have a follow-up to a question Representative Martin made. It relates to the county's threshold being at \$200. Is that right? [Hughes answered, "Yes."] Have there been complaints surrounding that?

Hughes

To us? [Shannon answered, "Yes."] The Commission has no authority to change the county threshold. That's particularly the Legislature's purview. It's by statute. The Commission does not touch that.

Shannon

But, there's a discrepancy between the two. What I'm asking, have there been officials or some that complained to you about the discrepancy?

Hughes

I have had people say, why can't we get all the information at the county level that's at the state level. In fact, I believe, Representative Miller authored a bill his first or second year that would have brought the county candidates under the state ethics Rules. But, it's not possible for the Commission to address that because the Constitution says they adopt rules governing state campaigns, state officers and state employees — not county or local campaigns.

We produce the documents. We give it to them. It's the same law that existed in 1986 when the Ethics Commission was first formed, and they're still operating under it.

Shannon

Last question, Mr. Chairman. Does your office — I'm just going back to the complaints if there are truly people complaining about it — does your office keep a repository of those? Have you reported them back to the Legislature?

Hughes

No, sir. We have not.

Liebmann

I need to ask a question here. Is it not the case that at the inception of the Constitutional Ethics Commission, the Legislature volunteered the services of its bill-drafting staff to assist the agency in writing proposed Rules? How much of the Director's time do you estimate would have been saved by such a collaborative arrangement?

Hughes

Well, of course, the Legislature has its own bill-drafting staff. When the leadership of the House changed, then the House had its own bill-drafting staff, and the Senate has its own bill-drafting staff. The Commission is the one authorized to pass constitutional ethics rules, and they want their own staff drafting the rules.

That's not to say that we haven't had the assistance of legislative staff members all the way through. Back in 1992 through '94, we consistently met with legislative staff members, Vic

Thompson, Tish Sommers, Caroline Dennis, and their suggestions were always treated with respect and were many times adopted. It was never their primary responsibility to do the drafting.

It was based on the model law. I don't think the commissioners at the time would have approved anyone doing that other than Commission staffers.

The Honorable Lisa Billy  
["Billy"]

You list the increase, I believe it was a five-fold increase, and you list many reasons for that — computer statements and three forms, letters to political action committees, any party advising a candidate. I wonder how much money does the Commission spend on first-class postage?

Bryant

Probably about \$13,000 a year.

Billy

You also state that you have notification of filing; however, if these letters are not mailed out to the candidates or the PACs, those candidates and PACs still are obligated to mail in their forms. So, I'm just wondering what is the purpose? I'm thinking that the workload could be reduced. If candidates and PACs know they have to mail in their forms, why is the Commission, the employees, spending all that time sending out the letter. But, even if they don't send out the letters, the parties, individuals still have to send in those forms.

Hughes

The Commission has a Rule that a notice must be sent by regular mail 10 days before any report is due — or statement, financial disclosure statement. So, that's not a decision of the staff. That's a Commission Rule.

There's also an Administrative Procedures Act rule that arose from the old statute actually that requires us to give a 24 hour late notice when a report is not filed. And, that must be by certified mail — which has been very expensive for us through the years. When we started, a certified letter cost around \$2.00. Now it costs closer to \$5.00. So, certainly, that's another policy decision.

But, the notices are important. We thought, when we developed the electronic filing system, that we could give notices by email. And, we tried that. It was too early. We could not do it from our use of the data. Now, OK.gov, we've met with them, and they're going to be sending emails each day after the due date — the first due date, not the final — the first due date candidates or all committees

will receive a notice that says you have a report due by so-and-so. And, on the last day, it will say this is the final day. And, after that, then it will be a late notice that you still have a pending report that hasn't been filed. And, that will help us a great deal.

Billy I understand the Rules, Director Hughes, and I appreciate that. It doesn't necessarily make them the best or most efficient use. Does the FEC also send out these forms? And, when I visit with my treasurer, who is also a loan officer, she simply just asked me, "You know, the Tax Commission doesn't send me a letter if I'm late on my taxes a day after, nor do they send me a letter a month ahead of time stating, be sure and get your taxes filed. So, I'm just wondering, does the FEC send these out?"

Hughes I believe the FEC does send a notice. The FEC is different in that they don't require a phone number for any of their committees, so all of their notifications are by mail.

Billy So, you're saying the FEC does then?

Hughes I couldn't say. I'd have to talk to one of their information specialists to find out.

Billy I'm sorry. I didn't understand your answer.

Hughes I just say that all of their correspondence, all of their communication to committees, is by mail. And, I don't know whether they send a prior notice. I know that they have a website, they have a calendar up. We have also a website. Maybe our candidates aren't quite use to using the calendar yet, but it's up there, and it really is nice if you want to check it out. It really will tell you every due date you're going to have for an election.

Billy Do you also notify lobbyists or PACs?

Hughes Yes, we do, and statements of financial interest. And, there are 5,000 of those due every year. Now, a lot of those we can send by interagency mail because they are employees, state employees, with interagency mail access. But, a lot of them are sitting boards and commission members who we don't have interagency mail for, so we pay for the postage for that.

Billy Do you think there would be any time savings involved if your

staff, which I'm hearing is overworked, did not have to send out those late notices or notices that a statement is due prior to the due date?

Hughes I'm certain it would be, but compliance would also decrease. I mean, still, with us sending out the prior notices, we have 100...

Bryant The last reporting period, there were 99 late letters — state, county, candidates and PACs — 99 out of...

Hughes Of the financial disclosure statements, how many do we normally have of those?

Bryant There's about 400 out of the 5,000.

Hughes If you quit sending the notices, then that could go up to 1,000, and late letters could eat our lunch. So, one or the other is going to — I mean, you're either going to have compliance or not.

Billy You've mentioned several times what surrounding states are doing. What do surrounding states do on this particular issue?

Hughes I don't know. I would have to benchmark that question.

Billy Could you find out? [Hughes answered, "Yes."] I would be interested since you're referring to other states in the \$50 threshold, then I'd like to know how other states — perhaps there's a more efficient way to get candidates and committees to hand in their paperwork.

Hughes The benchmarking on the threshold was specifically asked. And, I don't mind doing that at all. I would be glad to. [Billy said, "Thank you."]

Shannon A couple questions. Thank you, Mr. Chairman. Ms. Hughes, is their purpose — I have a question regarding the contributor statement — is their purpose to insure the recipient that the contribution is not being laundered and, if not, what is the purpose of the contributor statement?

Hughes Let me tell you the history of the contributor statement. It was another recommendation of the David Walters Multi-County Grand Jury. There was an envelop, supposedly with \$20,000 in it, and they gave them a list of contributors later. And, the Multi-County Grand

Jury came up with this. It is the only form like it in the country. It is meant to assure that these type contributions are truly given from the personal property and not in the name of someone else.

So, I can tell you that it is a unique form. We have subpoenaed it. We have used it. We don't require it to be given to us unless we subpoena it or we audit your campaign. There are three forms because one form is for individuals — they sign individually. One form is for a committee — where an officer of the committee is able to sign. And, another form is for a fundraiser and allows nine people to sign on one form. But, it's all the same language. It says this was my money to give. And, it's admissible. It's a protection for the candidate or the committee to say this person represented to me that this was his property. I didn't have any reason to question it.

Shannon

So, the nature, based on your history on Governor Walters' case, was to go toward lying — that is to say, if someone was likely to launder, does the contributor form truly serve as a disincentive is my question. And, was this the issue or was there a similar issue in the recent case of the state auditor?

Hughes

That was an issue in the recent case because they had what the federal authorities refer to as "straw donors" — where the money was not the contributors to give, money was given to the contributor, then they gave it in their name, but it wasn't theirs.

Shannon

The same as in the Walters case — \$20,000.

Hughes

Same thing, yes. But, the contributor statement was not — I mean, it was developed in 1994, not 2006 or 7.

Shannon

This came up before in the past. I used to work for two members of Congress, and as I recall, the FEC did not require this. Again, what other states require this. [Hughes answered, "None"] You say it is truly unique.

Hughes

It is a product, an Oklahoma product, from the Multi-County Jury recommendation.

Shannon

Would you say, if we're the only state doing it, would you say that it's creating a burden for you and your staff?

Hughes

Not particularly. We don't get it unless we're investigating,

and we need it. And, it certainly is an investigative tool. It also has been very good for prosecutions in that the Attorney General's office used it in its prosecutions when they have not gotten one from someone, and they are the ones who actually gave the money.

Shannon

So, it doesn't create a burden for you and your staff, but would you agree that it creates a burden for the contributor or the recipient, and it's probably unnecessary?

Hughes

Unnecessary is a strong term because it gives the information that is required on the disclosure form. If you get the contributor statement, you've got the occupation and employer. You don't have to go further than that. Otherwise, where are you going to get it? You can google that person, and if they're a very well-known person, you might find the occupation and employer. But, if they're not, you might have to dig deeper. You might have to go personally to them. So, if you have the contributor statement, you've got everything you need to go on the forms for disclosure.

Shannon

But, I'm trying to get to, does the benefit outweigh the cost?

Hughes

That's a question for the Commission. It's a policy decision.

Shannon

But, with all due respect, I guess that the real issue I'm trying to get to is you mentioned that the form — the contributor statement form itself — gives you the information of the person's occupation. It gives them an affirmative statement that they are the one giving the money, the money is theirs.

Isn't it easier — I think about my campaign treasurer. I'm from Lawton, Oklahoma. We can just pick up the phone and call someone and ask, "What's your occupation?" That's a lot easier than having them fill out a form, give them the form, mail them the form, and then ask them to send the form back.

Hughes

I can tell you that it certainly is some trouble. When we first started putting reports online, it wasn't mandatory, and we started with January 1, 2006, so we did every report from January 1, 2006 until it became mandatory in the Pre-Runoff Primary that year ourselves. When they didn't put the occupation and employer, we looked it up, we googled the name. Or, when we couldn't read it, which was 90% of the time if it was hand-written, then we did the same thing.

So, yes, it slows you down. But, it's valued information to the public. That's one of the criteria for the disclosure grade that we get that we require that information. And, we were very proud this year that our grade came up to a "B" because we started out with an "F".

Shannon

But, the contributor statement itself doesn't provide disclosure to the public. Your website does.

Hughes

It provides the information that goes on the disclosure.

Billy

This is a question related to the line item of spending over \$50. I know, prior to the implementation of the new Rules, you could categorize the expenditures. And now, we're having to line item the expenditures. I'm just wondering what is the purpose, what are we trying to prevent from happening?

Hughes

We had testimony that it was very difficult for candidates to categorize. In fact, if you look at the county form — it's in the statutes — you have one line for advertising, one line for billboards, one line for postage, one line for printing. Sometimes you could put an expenditure in all four of those. You have to pick and choose.

We're very little help to them. We just say, "Pick one" that it would logically fall in and use it. So, categorization can be a good thing and a bad thing. It depends on whether it's clear-cut falling in that category, or whether you've got overlap in what you're calling your categories.

Billy

So, what I'm hearing then is that's actually a time saver for your staff to line-item rather than categorize.

Hughes

It's a time saver. To go down your check book, to me, is easier than trying to figure out which category it goes in.

ScMartin

Following in the line of questions that we have, your memorandum states that the adoption of the Constitutional Rules required "expanded information [which] mandated expanded reports ... greatly inflat[ing] the volume coming through the repository..." According to your Memorandum, there are 27 reporting forms under the Constitutional Rules, where formerly there were five. Why is this five-fold increase in forms a positive change? Would your workload be reduced if the number of forms was reduced? By how much?

Would your workload be reduced if the number of schedules on the C-1R was reduced? By how much?

Hughes

It would be reduced, but the quality of disclosure would also be reduced — what information would be available to the public would be reduced. The five forms were statutory forms. If you'll look at them in the statutes, which the counties still use, they are a designation of agent, a registration of the committee — which are almost duplicate forms because the agent of a committee is usually the treasurer — and then there's the financial disclosure statement and the campaign report.

The campaign report had no schedules. It's a one-page document. It told the public very little. It still tells the public very little. It doesn't balance because you don't have to put in the money you put in your campaign, so you can never see what's in a campaign because the expenditures will, a lot of times, be more than the contributions — because they don't have to put in their own money.

ScMartin

You mention the one-page document. Is it really true that a candidate could list all contributors that donated \$200 or more on one page?

Hughes

Many of them do, but they've got small campaigns. They're from the smaller counties or municipalities. The larger committees, like Tulsa and Oklahoma County — some of their reports are as big as a Senate campaign, not usually approaching a statewide race, but they're substantial reports. We don't get those here locally, so I can't tell you how big they are. We get the county ones, but we don't get the municipal.

ScMartin

It really wouldn't be — if I had a couple hundred contributors, I would have more than one page.

Hughes

Oh, yes. You just say, "See attached sheet," and you have the information on the attachments.

ScMartin

I think you said in the summary that the Commission's report was more like a federal tax return. Why can this be a favorable comparison?

Hughes

Well, the electronic filing system that we currently use was developed by developers that originally did the income tax filing system that is now used widely online.

But, the forms are copied almost verbatim from forms that existed prior to the Ethics Commission — those from Washington state, those from the FEC. So, we didn't develop something brand new. The schedules are not brand new. They are what was being used in other venues at the time. And, that was the kind of information that was available.

If you look at lobbyist disclosure or personal financial disclosure in other states, you will see that they're more extensive than Oklahoma has. If you did a review or revision, you would probably include a lot of things that we don't currently have.

In 1994 when the Commission adopted its Rules, it looked at what was being used at the time and what information was available at the time.

ScMartin

Is it true that staff enters data for candidates and PACs with expenditures of less than \$20,000 in the Commission's online reporting system?

Hughes

Yes, it is, since 2006.

ScMartin

But, the requirement, though, is for candidates and PACs. The responsibility, the duty is on us, not on you. You have mandatory electronic filing, isn't that right?

Hughes

Right. And, we certainly inform them immediately when they go over the \$20,000 mark. If they give us a report that has gone over, we insist that they do that report online even though we've got the paper in. We count the paper for being timely filed, but then we start requiring them to do it online.

ScMartin

Do you have any estimate on how much — since staff is doing this for some candidates and PACs that have over \$20,000 — wouldn't you save time and resources if that was curtailed?

Hughes

Yes, we would. But, we had the argument for it not going online in the first place — well, I'm not going to do it if my opponent's information isn't up there. Well, your opponent may be someone who's not going to spend any money in their campaign or doesn't spend more than \$5,000. Do you want to see that, too, online, or do you want to have to come to the office and look at the paper? The public wanted to see it. We were told that.

We personally took it upon ourselves to get that information up as soon as it comes to us. In fact, we get it up within 24 hours of a paper report being filed so that opposing information is available.

ScMartin

Your argument is good, but isn't it up to the candidate? I don't care so much about what my opponent is saying. I mean, the Rules are the Rules. I'm supposed to file if I raise over \$20,000. It's not your responsibility for me to file online. It's my responsibility.

Hughes

No unless you reach the \$20,000 mark, and the Commission has set that threshold. It did so back when it became mandatory.

ScMartin

Right. But, the point is, though, is that you're doing it for some candidates. Shouldn't it be the candidates who are doing this?

Hughes

They're not required to. They're required to file it on paper. We get the paper. We put the paper online.

ScMartin

Okay. The next question will help clarify this. Have or will you consider then lowering the threshold from \$20,000 down to \$5,000?

Hughes

That's a consideration for the Commission. If they feel that times have changed to where the average candidate now has the computer expertise to file online, if they want to consider lowering it, that's their decision. That's not the decision of the staff.

ScMartin

Do you know approximately how many campaigns raised less than the \$20,000 threshold last cycle?

Hughes

Our Principal Assistant, Patti Bryant, has estimated 25%, but once it goes online, it's difficult for us to tell.

Bryant

There are many candidates that are less than \$20,000 that file their reports online. About 25% of all the reports are filed on paper. They're small reports, and the staff enters those.

ScMartin

If you were to consider lowering the threshold to \$5,000...

Bryant

That might reduce it some, but there are many candidates who don't have any activity, and they file C-3Rs. A lot of the stuff we get — of the 25% — are just really quick reports; they're C-3Rs that take about two minutes. We do them, the paper ones that are under



to the reports five days after we've gotten the report. It's not easy. It creates a lot of time, but it passed despite our objections.

ScMartin

Well, with all due respect to the Senator, this is a new Legislature. It might be an appropriate Rule change. The Legislature might look favorably on eliminating it. It appears to me, when I file my reports online, when I do it at that point in time, I am testifying to that as I submit it. So, it would save time on our part, and clearly on your part, and resources to eliminated it.

Hughes

In all fairness, electronic filing came after Commissioner Hamilton's service on the Commission.

ScMartin

So, that might be another item to consider to help you.

Hughes

We're certainly taking down everything that you're saying.

ScMartin

In that same vein, what are your thoughts, or wouldn't it significantly reduce your workload and paper consumption if candidates and PACs under the \$20,000 threshold only had to report once a year? What are your thoughts?

Hughes

They can do that. If they have less than \$500 activity, they can file a statement of inactivity and file annually.

ScMartin

There's a big gap between \$500 and \$20,000.

Hughes

That's right. And, it's another policy decision if you want to raise that threshold, that's the Commission's decision to determine that.

ScMartin

It would certainly save your staff time.

Hughes

Yes. It could.

Liebmann

Rule 257:23-1-2(b), which was adopted in 2008, lowered the lobbyist disclosure threshold from \$50 for elective officers and \$25 for other state officers and employees, to \$10 in the aggregate for both during a six month period. By how much will this new Rule increase staff workload?

Hughes

We input lobbyist expenditures that aren't filed electronically ourselves. That's a new system that we began just this year. I think

we put up 2006 and 2007, but we did that ourselves. Many lobbyists are filing electronically now. We don't know how many that's going to be until we get this report in that's due January 20<sup>th</sup>.

But, it would certainly increase some of our workload because we'll be inputting it, but I can tell you that there were several lobbyists under the old system who disclosed everything anyway. So, it's not going to be as big as you might think — because they just did it. It was easier for them than to eliminate those under \$50. But, there would be some savings of time.

Liebmann

In your budget requests for the past number of fiscal years, you've asked for more office space and, in part, due to document storage that you don't have enough room for. Does the Commission microfilm any files or store files electronically? If not, could you have used part of the increased appropriation to purchase the necessary equipment?

Hughes

We didn't have very good experience with microfilm equipment. We did purchase it. In fact, we purchased the same equipment that was then being used by the Oklahoma Corporation Commission. We purchased a camera and a reader-printer. And, the manufacturer ceased to service them, and we were left with film that we didn't have anything to read it with. So, we're not really big on...we're forced to keep the paper because we can't afford to lose an election cycle that we put on microfilm. In fact, the records management people tell us we've got to keep it for 42 years.

Liebmann

Forty-two years, and you tell me I only have to keep my records for three years. And, the Internal Revenue is the same way.

Hughes

That's right. But, we have to keep stuff that you file with us 42 years. And, we've archived as much as we can. But, they won't take anymore from us.

Liebmann

Who made the 42-year rule?

Hughes

The Oklahoma Department of Libraries.

Liebmann

Would you like that fixed?

Hughes

Any help you can give us, we appreciate.

Liebmann

You all please make a note of that, and we'll accept that as a request.

Hughes

At the time the Commission was formed, we got boxes in — Lee Slater can confirm this — we got boxes in from county election boards all over the state of forms that had been filed since the early 70s. And, we had to archive those. And, we're still paying storage space for those files that were created prior to our existence.

Liebmann

That's an additional expense. So, this next question means nothing. I was going to ask if you ever destroy anything after three years.

Hughes

No, but financial disclosure statements we do take out of files after they've been out of office for five years. But, you take someone who's been in office for 12 years. You add another five years. That's 17 years that we're going to have it in the files.

Liebmann

In your memorandum you say staff believes the Commission operates the most accessed repository in state government. Have you surveyed other agencies with similar duties such as the Secretary of State who has nearly 400,000 filings a year on the average or our two big universities? They must have enormous amounts. Where do you get your figures, and how do you feel that you get more requests than anybody else?

Hughes

We don't have the figures. That's the reason we stated it in terms of belief. But, we do know that this information has been gathered on paper for years. In fact, the last year that we made copies, because it wasn't available online, was 2004. And, we estimate there were over 56,000 copies made that year. And, that doesn't just include Oklahoma.

I'll acknowledge all the information the Secretary of State's office has and other agencies, but ours is used in-state. It is also used by think tanks, by follow-the-money groups. They were getting paper files before we put it online. Now they get it online. So, we're estimating. We can't prove that we're the most accessed; we just believe that because of the calls that we get to help. And, now people are getting to where they can pretty much use it, and they don't ask for our help as much as they did.

Liebmann

I don't believe seven of you can each handle 700 calls a year.

Billy

My question that was sent to you is referring to your investigating and prosecuting ethics violations. In your comment you had stated that lack of FTEs is one of the reasons why you have to refer issues to outside agencies, but because of other agencies, I'm assuming their lack of resources, they're unable to keep them or take them on. But, I'm wondering, without revealing any names, can you provide an example, a specific example of that?

Hughes

Let me explain first that the Commission has the authority, and the sole authority, to enforce its own Rules, and they carry civil penalties. They don't carry criminal penalties. So, when the Commission does not have the resources to take something to District Court, and it refers it to a prosecuting authority, the only thing they can refer is criminal violations.

Now, the Legislature has adopted some statutes that read almost identical to Rules, such as the limitations on contributions, the prohibition on corporate contributions, and other things. But, most of our Rules are civil penalty ethics rules, so when you refer it for prosecution by an outside agency, you are giving up the ability to enforce the civil penalty ethics rule violations that were there.

And, many times — I can't give you specific names unless they were public record — I can tell you that the Commission issued four public reprimands against Carroll Fisher but did not proceed because of the amount of time it would have taken for that investigation and those trials. And, those trials are still going on. The Attorney General is conducting them. And, they are only pursuing the criminal violations. That's all I can say.

Billy

So, the others they do not pursue, is it related to, are you suggesting they have a lack of resources?

Hughes

No. They don't have the authority. They do not have the authority to enforce civil penalty ethics rules — neither the DAs nor the AG nor any federal prosecutor unless there are some strange federal laws that sometimes will be able to pick up a state law that carries civil penalties. But, it's not a common thing.

Billy

So, if you had an additional, I think you had requested, an additional attorney and investigator, how would specific employees assist?

Hughes We would use that employee to assist for prosecutions.

Billy And, how many would you estimate, I mean, would this be a full-time position?

Hughes Yes.

Billy And, they are becoming that complex — the investigations?

Hughes Yes.

The Honorable Colby Schwartz ["Schwartz"] Director Hughes, I'd like to echo some comments. I appreciate your time, your patience you given to this process. It's one that we need to have.

My questions are going to be related to the duties of the commissioners of the General Counsel and they are directed to the position and the duties as lined out by the Commission to the General Counsel — no one specific.

The attachment states that the General Counsel assures the Commission operates in conformity with the Constitution, Commission Rules, the Political Subdivision Ethics Act, and the APA Rules. Aren't all agencies required to comply with all of these whether or not they have an attorney on staff?

Hughes Well, yes, all except the Political Subdivisions Ethics Act. That doesn't apply to all agencies. But, the fact that they comply — some have in-house counsels, some contract with the Attorney General for legal advice — but, that takes nothing away from the fact our General Counsel spends a portion of time providing those services to the Ethics Commission.

Schwartz Okay. You just kind of led me to my next question. You mentioned that some agencies do contract with the Attorney General. In your request, you mention hiring another attorney. Would it not be more cost effective to contract with outside counsel to prosecute Ethics Commission cases?

Hughes We've had some experience with that especially in the Keating case. We went to four different law firms seeking someone to represent the Commission in that prosecution. And, those were rejected. It is very difficult. Those become a very public thing, and for

PR purposes, they're not necessarily willing to take on a prosecution by the Ethics Commission.

When we have used outside counsel, such as in 1992, and we used Clyde Muchmore and Harvey Ellis, they did it for such a reduced cost. The actual expenditure of time could have paid a full-time salary easily. They just didn't demand it of us because they had agreed to the amount in the beginning. But, it certainly went way over their estimate of what it would have been.

And, we feel like by the time we hire outside counsel for one or two cases, we could easily have a full-time attorney there making the decisions with us.

Schwartz

Thank you. In that same regard, looking at the FY-2009 executive budget, at the bottom we have the number of complaints was 20, and then in fiscal year 2006, it was 24. That just doesn't seem like that large a number that would justify an in-house counsel. Is there some complexity to these?

Hughes

Yes. There are. The more time that's gone by, the more complex our investigations have become. They involve subpoenaing records, doing flow charts. Our initial investigator didn't even touch the surface of what we're having to do now with the records because the complaints are more complex. And, the manipulations of money are more complex.

If you look at the case of the State Auditor and Inspector, they devoted almost the entire Oklahoma City FBI office to that case investigating to bring all of that information into that prosecution. That was not something that we could have done even though those violations fell under the Ethics Commission's Rules. But yet, those were done by a federal agency because they had the manpower to do it.

Schwartz

Moving on to a question that you received. Does the General Counsel take notes and draft minutes for all Commission meetings and public hearings? If so, is that appropriate work for a trained legal counsel versus that of a clerk?

Hughes

Well, the open sessions are recorded. We were advised by the Attorney General not to record executive sessions. So, the General Counsel takes minutes of the executive sessions. She also takes notes of her assignments and whatever other beneficial thing she thinks she

needs from what goes on in the meeting. Many times her notes have been the backup when the recording equipment has failed. It's the only thing that we've had.

But, no. Right now the Principal Assistant prepares a transcript of the meetings from a recording. Either the General Counsel or I go over that and make the corrections, and that's what we use — a strict transcript. We do not put them in the revised form that we used to because we just don't have the time to do that.

Schwartz

It appears the last hour and a half, the overall spirit of what you've said is time and resources. And, you kind of go into that in what you just said. And, that is that the minutes of the meeting seem to be verbatim whereas other agencies in their meetings — commission, agencies and boards — tend to take action minutes. Meaning we only report things when there is action that takes place.

Is that something that you're required to do verbatim, or is it something you just chose to do? If so, I think this goes to the point that there is some work that's being created that is taking additional resources and maybe doesn't have to be.

Hughes

It is much more difficult to reduce minutes down to fewer pages because you have to think about what's being said. You have to put it in better language. You have to correct the grammar, correct this, correct that. By the time you do that...last year for our November hearing — and, the Commission likes to see the entire hearing; they do not like to see it abbreviated. — our November minutes — and we did not do any business that day; there were no motions taken; there was no business conducted — they were 82 pages long because the testimony ran from 10:00 o'clock in the morning until 2:00 in the afternoon. It's just impossible with the time between the November meeting and the December meeting to condense that. What we did was leave it in transcript form.

Schwartz

Well, I just, as Representative Martin alluded to earlier, I'd like you to just make note of that. I think that's something that maybe you should consider due to it would be less work than we have now. Granted, it sounds like you're doing it within the discretion of the commissioners, and that's another issue.

I want to close with — I've got a question that Chairman Miller alluded to when we started this — there's going to be times when this

isn't exactly comfortable, and that's not the notion. We're here to have a public hearing so that we do our duty to the people of Oklahoma, those who elected us. And, we've talked a lot about time and resources that have been spent on the Commission as to what their duties are.

And, this goes back to the General Counsel, and just have a very frank and open discussion, and that is going back about a year ago when we started hearing discussions about a possible lawsuit against the Oklahoma State Legislature. And, my question is, when we talk about time and resources, how much of the General Counsel's time and or staff have been spent in the process of possibly doing legal research, preparing legal drafts to look at having or filing a lawsuit involving the Legislature?

Hughes

The Commission staff did whatever the Commission asked them to do. And, if time was requested, or the Memorandum was requested by the Legislature, certainly the Staff spent that time. In fact, I can remember us having to divide duties so that we could get our regular work done and get the Memorandum done at the same time because we had a meeting coming up; we had a public reprimand to do. There were a lot of things going on, and we managed to do that.

I can't tell you the percentage of time that went into discussing that possibility. I can only tell you that the staff performed whatever requests were made. And, I want to say that I appreciate the demeanor of the Legislators, and I appreciate the tone of your questions. Thank you.

The Honorable Mike  
Reynolds ["Reynolds"]

This is exciting. I'm so glad that we're taking the opportunity to carefully scrutinize a million dollars in the budget when we've got several billion probably coming before us today, and I look forward to the same level of scrutiny in these other agencies. It would be wonderful. It would be a new day for Oklahoma.

We had considerable discussion about a number of issues, Mr. Chairman, and if I could, I think that, if it's all right with you — we have several commissioners here today, and if one of them would like to speak and give Ms. Hughes a break, because my questions are more directly at the commissioners, who actually have the authority, if they desire.

Liebmann

If they need to answer the questions, they're welcome to.

Direct your questions. We've got a long day today.

Reynolds

And, so, I'm sorry, I do have that permission?

Liebmann

If she wants someone else to answer the questions, it'll be fine.

Reynolds

Thank you. Ms. Hughes, the Commission has passed rules over a number of years, and every single activity that you undertake has been approved by the state Legislature by their either accepting or rejecting the rules which you've passed. Isn't that true. [Hughes answered "Yes."]

And so, if we were to say, why did you do this or why did you do that, then the opportunity would have been afforded each and every Legislator to ask that question of you in a meeting previous, and then if they didn't like that rule, if they didn't consent to that rule — for example, they didn't like contribution slips or they didn't like a \$50 limit — then they could have crafted a resolution and rejected that rule. Well, reject it as long as it passed the House and was in agreement with the majority of the House and sent it to the Governor. [Hughes answered "Yes."]

So, in effect, you are operating basically — and, I know you don't craft the policy, the commissioners craft the policy that they think is good for the public and those rules are proposed. In fact, I think this week or next week, there'll be new rules proposed.

In fact, if someone was to have an immediate impact on changing any rules, an appropriate course of action would be to find an ethics bill since our bill filing deadline is Thursday of this week and insert into that bill any changes that they think need to be made — for example, increasing the contribution [threshold] to \$200 or whatever. And, they could find that bill. And, the Legislature could add to your Rules, or they can reject rules that you pass which will be passed next week.

Hughes

The Legislature can amend existing Rules the same as the Commission can. They can also disapprove them.

Liebmann

Representative Reynolds, I want to point out that most of these Rules that they operate under were passed long before you or I were here. You were here before I was. So, we had no bearing and no vote in any of these.

Reynolds

Thank you, Mr. Chairman. I realize that. Most statutes in the State of Oklahoma were passed long before you or I were here. I certainly agree with that completely. That being the case, though, we could still pass rules that would negate Rules that were passed in 1994 or 1996 by our statutory authority, couldn't we?

Hughes

You could amend them, yes.

Reynolds

We could amend them. That's what I thought. So, any member in the Legislature can propose any rule they like. But, I have a question for the commissioners. We've heard a number of proposals today, and if any of the commissioners would like to address it, I'm just wondering if any Legislators have come to any of you commissioners during the previous year or two years or three years and suggested rules to you that you thought were beneficial to the citizens of Oklahoma, and you've chosen to put those rules on the agenda and, in fact, I believe any person can have a proposed rule put on the agenda. But, I'm just wondering if any Legislators have done that previously. And, I'd be happy if any of the commissioners...

Loy

Representative Reynolds has proposed a rule.

Reynolds

Thank you. Are you aware of any others, Commissioner Loy?

Loy

I'm not aware, but it could have happened.

Reynolds

Thank you. You were asked a number of questions about what other states do and things of that nature. And, it seems that we have possibly a little extra staff here in the House of Representatives that's been volunteered to help you. I wonder if possibly if any of those questions you might want to redirect to the House staff and ask them to do that research on what surrounding states do. You think that might be appropriate, and it would save some time with what you all are required to do?

Liebmann

I believe what the House was going to volunteer was their bill writers to write the bills.

Reynolds

Okay. With regards to that, wouldn't that kind of — I think that possibly the Commissioners sometimes have some ideas to discuss in executive session, things of that nature — that it might be very detrimental to have someone outside your immediate group have any sort of knowledge of information you might want to propose and

actions you might want to take. You think it would be a good thing to bring in the House staff, the Senate staff, the Governor's staff, or the Attorney General on many of those cases.

Hughes

I would not comment on that.

Reynolds

Ms. Hughes, I just want to say I think you have done an outstanding job today. And, I hope that we do scrutinize a two million dollar fence this afternoon as carefully as we've scrutinized your agency today. I think you all are doing an outstanding job, and I hope you'll keep up the good work.

The Honorable Steve Martin ["StMartin"]

Mrs. Hughes, I want to figure out a way to save you some money on your procedures. What percentage approximately of your hearings would you estimate regard the Legislature, members of the Legislature, as opposed to other state employees, state elected officers?

Hughes

The Commission does not conduct hearings. They are in the position like a DA. They investigate, they look at the material, they determine whether to pursue it or to issue a private reprimand, a public reprimand, try to enter into a settlement agreement or to file it in District Court. But, they do not conduct hearings.

StMartin

At what point do you decide whether to have a public or a private reprimand — that's not a hearing?

Hughes

No, it is not.

StMartin

What is it?

Hughes

It's in the executive session of the Ethics Commission. It's totally looking at the investigatory materials that have been prepared by staff.

StMartin

So, in other words, it's not a hearing because it's not open to the public and there's no testimony, but it is a meeting.

Hughes

There's no testimony by the respondent.

StMartin

But, it is a meeting which takes time. And, what percent of those meetings would you guess regard the Legislature?

Hughes

That would be a guess on my part. I would — it's at least 50%,



We believe it would be in your best interest to consider this rule and either be prepared to change your activity or be prepared to deal with an ethics violation. He hasn't had a reprimand. It's like the private reprimands that you're talking about. It's probably something he didn't know that he wasn't supposed to be doing. It didn't take a great deal of research. It didn't take a committee hearing. It didn't take a meeting to go over an investigation. He didn't have to hire any counsel. He just received notification that you may be in violation. You might ought to take a look at this. Would it be within the purview of the Rules, as are in the Constitution, for you to do that instead of going through the entire formal process that's going to wind up with essentially the same thing of putting someone on notice that you may not have been aware of this, but you may be in violation. Would that be possible?

Hughes

To me, it's one and the same as a private reprimand. Now, the Commission has stopped short of a private reprimand on at least one or two occasions where they've issued a letter similar — to watch your activity because it's getting very close to a violation, and you need to be sensitive to the impropriety. But, there's nothing in the Rules that allow that. The Commission would have to amend the Rules to allow for your cautionary letter. And, that again is within the discretion of the Commission, and we'll certainly pass that on. We've got three members out of four here present today.

StMartin

Well, I would submit that it is different to receive a cautionary letter and to receive a reprimand because there is no reprimand associated with a cautionary letter. There is no decision that you have done anything wrong. There is simply a notification that you may want to be careful because you may be doing something wrong. And then, of course, if they want to go brush up on the Rules, and they feel aggressive, they can go ahead and do it and fight it out if a complaint is filed.

But, I would think that would save you a great deal of time. And since, in all the investigations that you do, you've come up with three public reprimands last year, and the rest of them have either been dismissed or been private reprimands, I would think that you could save some money, save some staff time — because it would not be a finding of guilt as a reprimand is — to very carefully consider that possibility.

Hughes

In either case, though, it requires some investigation to

determine whether there was an actual violation or whether, in fact, it was intentional. There has to be some information before the Commission to make that determination about whether it should be — as you say, if they adopted it — a cautionary letter, a private reprimand or a public reprimand.

StMartin

Except a cautionary letter would not be a reprimand. It would only be a warning. So, it doesn't require the same level of investigation. Thank you.

The Honorable Mike  
Brown ["Brown"]

Director Hughes, first I want to say that I thank you for the great job that you're doing. You mentioned awhile ago in your budget request for a prosecutor, possibly more investigators, can you expound a little bit more, since you are not able to do criminal prosecutions, and some of these cases that have come forward this past session or last year that you referred those over to the DAs for prosecution in the criminal arena, what — and, it may need to go to a Rule change or some different committee than this one here that's on appropriations and not on rules — that you could address needing teeth into your agency to enforce some of your Rules for criminal activity

But, what are you going to be able to do as a prosecutor on the civil side, with civil penalties? Are they going to change, increase, decrease?

Hughes

Civil penalties under the Rules can go up to \$50,000, so while they don't carry jail time, they certainly can be penal in nature. What I wanted to speak to was "increasing the teeth" in the Rules. We could not do that without a change in the Constitution because the Constitution limits us to civil penalty ethics rules. So, we cannot enforce anything that carries a criminal penalty. We can't adopt it, and we can't enforce it.

Now, the Legislature certainly can. You have the Attorney General, you have the DAs to do that. And, you have chosen to make some of our Rules have criminal penalties such as limits and other things. So, it's not that it's not possible, it's just that the Ethics Commission can't do it without a Constitutional amendment.

Brown

So, in light of some of the issues that you referred out last year to DAs for criminal prosecution, are you telling me then that, even if you would have had a prosecutor, you could not have prosecuted that because it was criminal activity and not civil activity.

Hughes

Sometimes the Rules read identically to the statutes, so we have civil penalty ethics rules for those rules. Sometimes we have Rules that don't have any criminal penalties, and those are the ones that don't get prosecuted by a criminal prosecutor.

Billy

Director Hughes, would you agree that when you receive taxpayer dollars and, under a particular guide or priority you then take those dollars and provide a 30% increase in salaries without legislative knowledge of how you spent those monies, do you agree that would cause more scrutiny than just a normal performance review?

Hughes

Scrutiny doesn't bother me. And, we certainly didn't intend to hide anything. That was public knowledge.

Billy

But, the question is, would you agree that would bring about more questioning because of that activity?

Hughes

Possibly so. Yes.

Miller

Representative Billy touched on something I was going to speak to on the length of this particular performance review which is just a little bit unusual. But, I would like to say that the purpose is rather obvious, and I think, in retrospect, this is the appropriate venue that the commissioners have been looking forward to, as have I, to continue working together through this process.

And, we decided some months ago that this would be the appropriate venue to have this discussion. And we think the Commission, as well as those participating, were aware of the reason of the extra length that would be added on to this particular performance review.

I'd also like to say thank you to you, Ms. Hughes. I know you've mentioned to us that you appreciate the spirit in which this hearing has taken place. I appreciate that also. And, I appreciate the spirit which you've demonstrated in answering these questions. And, I know you've been standing there a long time. And, so we're going to wrap this up pretty soon.

But, I do think this is a new day of cooperation between the Legislature and the Commission. And, I think the commissioners would nod their heads on that because I do believe that's the case, and

I believe at this very meeting, it is evidence of our efforts to work together between the two entities.

I do believe that this exercise has been beneficial. There has been no malice. And, there has been an intent to get to good government. And, I think that is happening. I think it has been beneficial because I think that the very questions have opened up some opportunities for efficiency. I believe sometimes that the commissioners are somewhat removed from the process because they're not here as often as the Commission staff, and so I'm very glad that they're here today to hear this firsthand because I think that kind of information exchange is beneficial.

Time and resources are precious, and we've discussed that at length. And, I think some of these questions and discussions that we have had today, in my mind, have identified some areas that we can be more efficient in and that we make sure that the benefit of a rule outweighs the cost. And, we have discussed a lot of times and a lot of your answers — if the answer was that is a policy question for the Commission; I'm just carrying out the Commission's request...

And so, I hope the Commission will take a comprehensive review of their Rules to make sure that their Rules are meeting the mission. And, I think that's critical. The Rules have got to meet the mission, and if they're not meeting the mission, if they're not producing a positive outcome, if they're not producing better government, we need to give that a very critical analysis and make sure that we should be doing it.

I think there is always going to be some that choose to believe that the Legislature and the Ethics Commission cannot work together in good faith. There are some that are always going to try to mischaracterize this relationship and the intent of the Legislature. And, there are always going to be those that try to agitate the relationship whether it's for personal political gain or for some other reason.

But, I want to say that I'm committed to working with the Ethics Commission, and I know that the Ethics Commission is committed to working with us, and I believe that everybody in this room, everybody at this table wants better government and more accountability, and we are happy to work with you towards that end. So, thank you for being here.

Hughes

Thank you. I'd like to say that the only thing that I disagree with you on, Representative Miller, is the amount of acrimony in the past. I really feel like the Commission staff and the commissioners have sought to have a good working relationship with the Legislature, and individually, one-on-one, we try to help everyone. We feel like we have a good relationship, and we thank you for that.

Miller

Please don't get me wrong. I am certainly not saying that's one-sided. [Laughter]

Hughes

Thank you very much.

Liebmann

Thank you for being here today. And, I think we've kind of opened up a window which we needed to do. It's always been one-on-one, but we've never had a group meeting, so to speak. And, if you see how you can shed some of your excessive paperwork, ask one of us to carry a bill next year. It's probably too late this year except for a real fast, speedy representative like you have at least one in the room here. Thank you for being here.

Hughes

I'd also like to thank our commissioners, Vice Chair Pettigrew, Jim Loy and Don Bingham for being here today. I think it's been very beneficial for them to hear what was said.

Liebmann

The Chairman of the subcommittee then called a five-minute break, and the Ethics Commission Performance Review Hearing ended.

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MARILYN HUGHES, Executive Director

Approved On Behalf Of The Commission:

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JOHN RALEY, Chair

MH/mh