

MINUTES OF SPECIAL MEETING
of the
ETHICS COMMISSION
STATE OF OKLAHOMA
held
SEPTEMBER 3, 2010

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 Friday, September 3, 2010, at 10:00 a.m. Chair Jo Pettigrew ["Pettigrew"] presided over the meeting which was held at the State Capitol Building, Room 432A, 2300 North Lincoln Boulevard, Oklahoma City, Oklahoma.

Determination
of Quorum

Roll was called to determine the existence of a quorum for the transaction of business. Commissioners answering present were: Pettigrew, John Raley ["Raley"], Karen Long ["Long"], and Jim Loy ["Loy"]. Absent was Vice Chair Bob McKinney. A quorum of qualified members was found to exist, and the business of the meeting went forward.

Commission staff members present were: Marilyn Hughes ["Hughes"], Executive Director; Rebecca Adams ["Adams"], General Counsel; Patti Bryant, Principal Assistant and R. Darey Roberts, Investigator. Observing all or part of the meeting were: Lee Slater ["Slater"], Slater & Denny; Amy Alden ["Alden"], attorney, and Chad Warmington, House Staff; Caroline Dennis ["Dennis"], Senate staff; H.J. Reed ["Reed"], lobbyist, ConocoPhillips; Michael McNutt, *The Oklahoman*; Representative Richard Morrissette; Barb Denny, Roy Williams, Drew Dugan and Mark Vanlandingham, Oklahoma City Chamber of Commerce; Jeff A Lee, Oklahoma Education Association; Clint Sloan, *ecapitol.net*; Fred Leibrock, attorney, Pat McFerron and Jeff Wilson, One Oklahoma Coalition; Representative Mike Reynolds; Brad Krieger, Arvest Bank; Barbara Hoberock, *Tulsa World*; John Woods, Speaker's Office; Joel Robison, Oklahoma Education Association; and Aaron Byrd, *OETA*.

Public Hearing on
Amending Rule Concerning
Prohibition on Transfer of
Funds between Committees

The first item on the agenda was a public hearing consisting of taking testimony and comments, as well as consideration of and discussion on, promulgation of an amendment and/or modification to the

Constitutional Ethics Rules [the "Rules"], Section 257:10-1-2(e)(2) of the Rules of the Ethics Commission, 74 O.S. Supp. 2010, Ch. 62. App. as follows:

257:10-1-2. Contributions

* * *

(e) Prohibition on transfer of funds between committees.

* * *

(2) **Political action committee transfers.** A political action committee, including an out-of-state committee also registered in another state or states and a committee also registered under the laws of the United States, shall not make a contribution to another political action committee as specified herein. A political action committee, including an out-of-state committee also registered in another state or states and a committee also registered under the laws of the United States, shall not accept a contribution from another political action committee as specified herein. This subsection shall not prohibit:

(i) a political action committee, including an out-of-state committee also registered in another state or states and a committee also registered under the laws of the United States, from making a transfer to a ballot measure committee; or

(ii) a political action committee from making a transfer to its own affiliated or connected entity in accordance with the definition of contribution, Section 2, Paragraph (2), Subparagraph (B) of Chapter 1 of this title.

* * *

Hughes

The Chair asked Hughes to give the Commission background on the issue before the public hearing. Hughes explained the history over the past few years of the Rule amendment concerning PAC-to-PAC transfers. She pointed out that the definition of a political action committee, while it excluded candidate committees, did not exclude ballot measure committees. In fact, she said, they were specifically included and would be covered by the ban adopted on PAC-to-PAC transfers.

She advised that Staff had called the Chair of the OPEA PAC, which had contributed to One Oklahoma Coalition. She informed him about the contribution, of which he was unaware, but he was already

aware of the ban on transfers. Before asking for the contribution back, he wanted their attorney to study the definition of "political action committee". In the meantime, staff studied the issue and felt that it should be brought to the attention of the Commission because transfers to ballot measure committees had not been addressed when the Rule was originally adopted.

The question was the enforceability of a ban on transfers to ballot measure committees as opposed to candidate committees. Staff prepared an amendment excluding ballot measure committees from the ban and submitted it for consideration. A Resolution was also prepared explaining what had happened and committing the Commission not to enforce the ban against transfers to ballot measure committees pending the Legislature having a chance to review the amended Rule.

Upon being asked by the Chair, Hughes advised she did not contact the Yes on 744 committee ["Yes on 744"] as she was unaware it had received a contribution from the National Education Association ["NEA"].

Fred Leibrock

The Chair called for public testimony and comments on the issue. Fred Leibrock ["Leibrock"] attorney with Phillips Murrah representing One Oklahoma Coalition ["Coalition"], was recognized. Leibrock said the Coalition opposed the Rule change and announced a complaint had been filed by the Coalition against YES on 744 that day.

He confirmed that the Coalition had received \$15,000 from the OPEA PAC, but claimed it had been returned. He asked that Yes on 744 return the over \$2 million contributed to it by the NEA. He further explained the reasons why his client felt the Rule amendment and Resolution should not be passed.

Joel Robison

Joel Robison ["Robison"], Associate Executive Director for the Oklahoma Education Association, was recognized. He announced he was speaking on behalf of Yes on 744. Robison supported the proposed clarification of the Rule. He explained that the people put state question 744 on the ballot in January 2009. Until recently, the campaign had been working under the assumption that clarification about PAC contributions being allowable was still in force.

Robison stated that monies they had received from the NEA did not qualify as PAC contributions. Instead, they were corporate dollars which were allowable for ballot measure committees. The NEA did have

a PAC, he said. But, the monies Yes on 744 received did not come from that PAC.

Representative Mike
Reynolds ["Reynolds"]

Reynolds was recognized. He gave the reasons why he was opposed to adoption of the Rule amendment and Resolution.

There were no further public comments.

Adams

Adams was recognized and explained that a ballot measure committee was different from a typical political action committee. She discussed the legal status of any Rule amendment the Commission might pass and of the Resolution itself. She explained that the Commission was adopting, not APA, but Constitutional Rules which required no finding of emergency and were not sent to the Governor. The agency, she said, was not bound by APA Rule procedures with respect to its constitutional rules.

Adams also pointed out that apparently both sides had come to the same conclusion, since each received money from PACs thinking that they could do so as ballot measure PACs. The Commission had the opportunity that day to clarify the Rule so that any ballot measure committee from this point forward would have guidance. It would put the agency in a better posture, she said, since it would not have confused the public, but would have taken steps to clarify how the Commission would interpret the Rule.

Hughes was recognized and stated the amendment was very simple. In the PAC-to-PAC transfer provision, it would exclude from the ban a ballot measure committee receiving transfers.

Loy

While Loy stated he was not in favor of the amendment, he preferred to do what was constitutionally right rather than what might be fair.

Long

Long stated that because the issue was important, was so close to an election, and a complaint had been filed, it would be, if not inappropriate, perhaps improvident for Commissioners to act that day on an important Rule change. She had five concerns.

One was that important decisions affecting a long standing Rule, should not receive a "knee jerk" response within 48 hours.

Two was that a complaint had been filed for which the Commission had procedures.

Three, she considered it “unfortunate” that, in the midst of one of the most important ballot measures that Oklahomans had faced in a while, the Commission should become a part, or a party to, or be perceived as inserting itself into, one side or the other and that the Commission staff had made contact with one side or the other. While perhaps that could not be avoided, she did not think the Commission should insert itself into the debate without following normal procedures that provided an opportunity to consider, to debate, to hear and to be thoughtfully discerning about its positions.

Finally, she felt that suspending enforcement of a Rule should be an extraordinary measure by the Commission. She did not think the current matter was an extraordinary situation that would justify a quick response without the proper underpinning that was provided by debate and deliberation.

Long recommended tabling the matter, taking no action and handling it in the normal course of business.

Raley

Raley asked staff to describe the legal implications of postponing action until January. Hughes said the current Rule would be in force which would prohibit transfers to ballot measure committees.

Raley thanked the speakers for speaking on this matter of “vital concern” to a number of people.

First, he said, irrespective of the Commission’s actions, a lot of people would be upset one way or another. Second, speaking both for himself and fellow commissioners, he said whatever was done would be on the basis of the law, and not political implications.

Raley then gave a narrative of the history of the Rule. In 2006, he said, the Commission was faced with a circumstance for which there was no immediate remedy. A prominent member of the state legislature, no longer in office, had created a series of political action committees supporting or opposing candidates. Transfer of funds were made from one PAC to another, to another and to another.

Those funds, Raley said, were co-mingled to the point where it became virtually impossible to determine their sources. At the same time, a very large war chest was accumulated which was then doled out to favored candidates. There was no Rule prohibiting PAC-to-PAC transfers. Nowhere in the 50 states was there such a Rule.

A Rule was proposed and adopted in 2007. At the behest of those in opposition to the Rule, who felt that there was a constitutional impediment, Raley said he asked that the promulgated Rule be withdrawn. Finally, although he did not claim to be a constitutional scholar, Raley said he was persuaded that there was no constitutional impediment. The PAC-to-PAC ban on transfers was unanimously adopted in 2008. It was applied to out-of-state transfers in 2010.

At no time during that lengthy debate did he recall any discussion about a ballot issue PAC. The concern, he said, was entirely on PACs supporting or opposing candidates. That was the intent of the Commission, he remembered, and the unanimous vote of the Commission.

Raley did not feel that the Commission would be changing the Rule but interpreting it by the current amendment. Although he felt there was wisdom in Commissioner Long's suggestion to wait until January, he thought people needed to know what the intent was and how the Rule would be enforced now.

Chair Pettigrew

The Chair expressed concern that the Commission's action would have the appearance of giving political favor to one side or the other. She did not propose that it be postponed to January, but that it be discussed at the regular meeting in two weeks.

The Chair confirmed that, when the Rule was promulgated in 2008, nothing was said about ballot measures. The intent, instead, was to prevent PAC-to-PAC transfers between committees supporting or opposing candidates. Regardless, she said, the amended Rule would not take effect until after the legislative session of 2011.

In answer to Loy's question, Hughes said postponing a decision that day would, in effect, keep the Rule in effect and would not clarify the inclusion of ballot measure committees.

Long asked Hughes to describe what occurred when a complaint was filed. Hughes said that first, neither the Commission nor the staff could confirm or deny the existence of any complaint. Once one was received, it appeared as a number on the next agenda. The Commission could either open an investigation, table the matter or take no action.

If an investigation were opened, Hughes said, a letter would be sent to the respondent. The respondent then had 20 days to respond to the

letter. The matter would then be considered at the next Commission meeting. Hughes agreed with Long that the investigative process allowed for a thorough look and consideration of all of the facts pertinent to the complaint.

Motion to Table

Long moved to table the matter of the proposed Rule change and the Resolution to the Commission's next regular meeting. Loy seconded the motion.

Discussion on Motion

Raley said that, whether or not the matter was postponed, there was still "a big sack of money here that is just sitting there". Either it must go back to the donor, he said, or be used. Irrespective of the merits or demerits of the decision, he thought there should be some decision made. For better or worse, he said, this body was going to have to make that decision sooner or later.

Raley further explained that the amendment was not changing the Rule, but interpreting it. He thought the time to act was then.

The Chair stated she needed more time to think about it.

Vote on Motion to Table

Roll was called for purposes of the vote. The motion failed two to two. Loy and Raley voted no, and Long and Pettigrew voted yes.

Discussion on Adopting
Rule Amendment

Long stated that, by and large, protecting the status quo was an appropriate position to take when there were still facts to be considered. She thought it behooved the Commission not to take action related to rules or resolutions until attention was given to the complaint, facts were received regarding past history, and information on past practice and how it was affected by current federal court decisions was received.

Raley was not concerned about who made the complaint or against whom the complaint was made. He said it would follow the usual procedure which was a prolonged activity that might take several months. But, he thought, the complaint or the decision on the complaint should not be the determining factor of what was done that day.


In all fairness, Raley thought both sides needed to know where they stood. He, too, was not comfortable about the decision. He wished for more than 48 hours to consider it. But, he said, members took an oath when they agreed to serve on the Commission to make the tough decisions. He was not sure members would know any more in a couple of weeks than that day.

Motion to Adopt Rule
Amendment

Raley then moved adoption of the Rule amendment. The motion
died for lack of a second.

Adjournment

Long moved to adjourn. Raley seconded the motion. Motion
passed unanimously.


MARILYN HUGHES, Executive Director

Approved on Behalf of the Commission:


JO PETTIGREW, Chair

PB/pb