

MINUTES OF REGULAR MEETING  
of the  
ETHICS COMMISSION  
STATE OF OKLAHOMA  
held  
October 18, 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 ten (10) days in advance with the Office of the Secretary of State, a regular meeting of the Ethics Commission of the State of Oklahoma ["Commission"] was called to order on Monday, October 18, 2010, at 10:00 a.m. Chairwoman Jo Pettigrew ["Pettigrew"] opened 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, Bob McKinney ["McKinney"], and John Raley ["Raley"]. Commissioners Long and Loy were absent. 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 ["Bryant"], Principal Assistant; and R. Darey Roberts, Investigator. Observing all or part of the meeting were: Amy Alden, attorney, and Dr. Rick Farmer, House Staff; Caroline Dennis, Senate staff; Michael McNutt, *The Oklahoman*; Shawn Ashley, ECapitol.net; and Lee Slater, attorney.

Election of Chair and Vice  
Chair

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

Pettigrew

Chairwoman Pettigrew thanked the staff for providing her with information and documents throughout the year. She thanked all of those who attend the meetings and provided information. She also thanked fellow commissioners for their moral support, confidence, reinforcement and information. Most of all she thanked members for being willing to work with her and work together as a Commission.

Raley

Raley conveyed his personal regards to the Chair for the way in which she administered and presided over meetings showing great

courtesy and respect to everyone present. He commended her opening remarks at the last meeting when she said:

However, make no mistake about it, we are not here to take sides. We are not on one side or another on any political debate. The Ethics Commission must be outside the realm of politics. We don't know how we believe as individuals about these questions, but it's not important. What is important is that we follow the Constitution. We don't always agree on how to get there. But, that doesn't remove the fact that we all believe, and I think I speak for everyone on this Commission, we will do our very, very best to determine what is right.

He concluded, "You have conducted these meetings with that philosophy in mind, and we are deeply grateful to you."

Raley then nominated Vice Chair McKinney as Chair for the coming year. Pettigrew seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously.

Chairman McKinney took over as Chair. He said, "We go through life, and every once in a while, if you are lucky, you get to meeting somebody who makes a difference. And Dr. Pettigrew is that type of person." He said he has been on the Commission for a little over a year, and she had made a difference in his life which he appreciated. McKinney then presented Pettigrew with a bouquet of red roses.

Hughes also thanked the Chair for her assistance both as Chair and before on the minutes and other documents. She hoped her assistance would not stop because she was no longer chair. Pettigrew, she said, was a great proofreader, and staff really appreciated her work.

Chairman McKinney then called for nominations for vice chair. Pettigrew nominated Commissioner Long. Raley seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously.

Public Comment on or  
Request for Constitutional  
Rule Amendments

The next item on the agenda was a public hearing consisting of taking testimony and comments, both oral and written, on amendments and/or modifications to the Constitutional Ethics Rules ["Rules"], Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp. 2010, Ch. 62. App., with respect to new items introduced for discussion or those listed in the published document titled: *Rules of the Ethics Commission, Proposed Amendments and/or Drafts for 2011 Legislative*

*Session for consideration at the October 18, 2010 Regular Meeting of the Ethics Commission.*

Hughes on Proposed Rule  
Amendment #6

Hughes explained that proposed new Rule Amendment #6, requested by Chairman McKinney, reflected the staff's review of everything that might need to be changed in conjunction with the United States Supreme Court case, *FEC v Citizens United*. Legislative changes, she said, were also drafted utilizing former Senate Bill 1741. The language was modified to better correspond to the Rules and Federal Election Commission Advisory Opinion AO-2010-11.

The amendment, Hughes said, would allow PACs formed solely to make independent expenditures or electioneering communications to receive unlimited contributions from all persons, including corporations and labor organizations. Senate Bill 1741, Hughes advised, was originally recommended by the Attorney General's Office to bring statutes into conformity with *Citizens United*. She invited a close review of the changes for unintended consequences.

Pettigrew

Pettigrew requested that changes to Rule Sections 257:10-1-14 and 10-1-16 be put into a separate new Rule #7. Hughes agreed. Pettigrew was concerned that these sections would require an additional report. Hughes explained that filing quarterly reports would require more reports than filing only the C-5R report for expenditures over \$500. It would depend, she said, on whether it was a first and final report for a single independent expenditure or whether it was made in a regular reporting cycle as a PAC.

Requiring C-5R reports for all independent expenditures, Hughes said, would mean all such expenditures would be reported at the same time – within 24 hours of being made. Such expenditures are common, she reported, prior to an election. Any other time they would be rare since their effect would be minimal if not made close to an election.

Independent expenditures, Hughes explained, are those used to support or oppose a candidate but not coordinated with a candidate or candidate committee. Electioneering communications, by definition, she stated, only occurred 30 days before a primary or 60 days before a general election. So, their time periods would already be limited. Independent expenditures, however, could happen at any time, although they did not unless they were supporting or opposing a candidate. Without an imminent election, Hughes said, an independent expenditure had little effect.

More immediate access to independent expenditure information was needed than quarterly reports, Hughes said, because they could be made with unlimited corporate money. Amendments made in 2010, she explained, required persons other than committees to report all independent expenditures within 24 hours. But, committees were not included in the amendment. So, the information would be available from a person making an independent expenditure, but not from a committee making the same expenditure unless it was made during the 15 days prior to an election.

Although independent expenditures could be made at any time in unlimited amounts, Hughes said, for maximum effect they happened before an election for candidates or ballot measures.

#### Legislative Proposals

At Pettigrew's request, Hughes reported the following legislative changes made by staff to Senate Bill 1741:

- page 7, language on "coordination" was conformed to Ethics Rule Section 257:1-1-2, definition of "independent expenditure"; and
- page 12, new language was made to correspond with proposed Rule Amendment #6 that would allow a committee formed solely to make independent and electioneering expenditures to receive contributions not limited in amount or source.

Pettigrew asked if there were any reason why the Commission was proposing the legislative changes instead of the Attorney General. Hughes said that, from what she understood, the Office of the Attorney General was not concerned about whether or not the bill passed. They had put the Legislature on notice of problems with the language. However, if the bill had the Commission's blessing, the Legislature might come closer to passing it, especially since it seemed to be a departure from current Rules.

Hughes noted that allowing unlimited contributions in source or amount to committees formed solely to make independent expenditures or electioneering communications corresponded with an FEC opinion, but it was not yet case law. Staff reported that experts had not opposed the opinion because they thought the FEC would lose a lawsuit challenging it and be out attorney fees. So, she thought, it might never become case

law. But, it was probably a logical conclusion of *Citizens United*. And, she thought the Legislature might pass it with the Commission's support.

McKinney

The Chair suggested that, on line 4, page 13, consideration be given to expanding a "financial institution" to include "financial arms" other than banks, credit unions or savings and loans. He offered to find out if such "arms" loaned money to candidates.

Raley on Proposed Rule Amendment #4

Raley said he would like the record to reflect that he would object to proposed Rule Amendment #4, the "threaten Rule", and would speak against it at the appropriate time.

Consideration and Discussion on Whether to Review Definitions of "Associated" and "Substantial Financial Interest"

The next item of business was consideration of and discussion on whether to review the definitions of "associated" and "substantial financial interest", found in Rules' Section 257:1-1-2, to determine if the amounts and percentages were "fair" and "reasonable" in light of today's economy.

Hughes said neither Howell nor Denny was present. As she explained in the administrative report, Denny reported they were considering an exception for small percentage – 5 to 10% – ownership in publicly traded companies. She offered to draft an amendment and check with them on what percentage they thought should be included. The Chair agreed.

Approval of Minutes

The next item on the agenda was consideration of and discussion on whether to adopt the Minutes [both open and closed sessions] of the regular meeting held September 17, 2010.

Hughes advised of three corrections. On page 6, line 2, "the OPEA," should be deleted. On page 8, the last line before ratification of expenditures, the last sentence should read, "The motion passed with four 'yes' votes. Vice Chairman McKinney abstained." On page 9, fourth to the last paragraph, second line, "Adams" should be "Adams".

Pettigrew moved to adopt the minutes of the September 17, 2010 regular meeting, both open and closed, as corrected. Raley seconded the motion. Roll was called for the purpose of the vote. The motion passed unanimously.

Ratification of  
Expenditures

Raley moved to ratify the expenditures. Pettigrew seconded the motion. Roll was called for the purpose of the vote. The motion passed unanimously.

FY-2012 Budget Request  
and Strategic Plan

The Chair asked when the Commission had to ratify the budget. Hughes reported it had already been submitted on October 1, 2010. She advised that changes could be made but would be difficult.

Pettigrew asked where the total expenditure for personal services' figure of "597" came from on page two of the "Budget Summary". Bryant explained that figures in the budget were rounded to thousands, so the actual amount would be \$597,000. That figure, she said, came from the total of personal services expenditures in the current FY-2011 Budget Work Program, which is not included in the budget request.

Pettigrew said it spoke well that, despite how difficult FY-2010 had been, Bryant found \$17,000 to carry over to FY-2011. Bryant reported that most of those funds came from not replacing the IT Network Administrator upon his resignation in April.

The Chair said the carryover would help in FY-2011. Bryant explained that she changed the funding in the budget work program from the Revolving Fund to the General Revenue Carryover Fund. The Commission would not spend that much more money but would save \$17,210 in the Revolving Fund.

No action was necessary.

Administrative Report

Hughes had no changes to the Administrative Report.

Pettigrew expressed appreciation for the staff compiling letters to the lobbyists or recipients of "things of value" who had exceeded the "things of value" limits. Hughes reported receiving 33 phone calls out of 33 letters. Adams compiled the letter, she said, but Hughes received the phone calls because her name was on the letter.

Callers, Hughes said, were extremely concerned. Some had already been aware of exceeding the limit and had refunded the money. Unfortunately, the reports had not been amended to reflect the refunds. Others, she advised, would be refunding amounts over \$100. She reported explaining that was not necessary, that they were being put on notice that they went over and that they needed to keep a close eye on it during the next time period. She estimated more than half were in the

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process of making refunds and asking lobbyists to file amended reports. The Chair asked if there was a time limit on when to file the amended reports. Hughes reported there was not.

Pettigrew asked for an update on the Business Manager position. Hughes reported she had conducted four interviews the previous week. Two final interviews were scheduled the next day. Five resumes were furnished to the Chair and Commissioner Raley who would interview three and make a final choice. Pettigrew approved, especially with the Chair's expertise in financial matters Raley's long term association with the Commission. Hughes and the Chair reported there were good applicants.

Next Meeting

Hughes announced that November and December meeting dates were set for November 22 and December 16. The Chair advised he would not be available on December 16. Hughes said she would reschedule December.

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

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

The General Counsel stated the items set forth at this place on the agenda were made confidential by law. She further gave her advice that disclosure of the items listed for the executive session would seriously impair the ability of the Commission to process claims or conduct pending investigations, litigation or proceedings in the public interest. She therefore advised that the Commission go into closed session for the limited purposes of considering the cited matters.

Pettigrew moved the Commission go into closed session. Raley seconded the motion. Roll was called for the vote. The motion passed unanimously.

Open Session/Action on  
Same

When completed, the "closed session" sign was removed, and observers returned to the room. Pettigrew moved that the Commission go back into open session. Raley seconded the motion. Roll was called for the vote. The motion passed unanimously.

Action on Informations

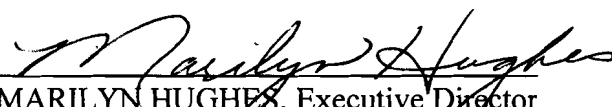
Pettigrew moved that IU-2009-006 be dismissed; that IU-2010-007 be continued; and that IV-2010-008 be continued. Raley seconded the motion. Hughes asked to change the motion from IU-2009-006 to IU-2010-006, which had been misstated due to an error on the Investigator's case summary. However, she said, it was correctly cited on the public agenda. Pettigrew and Raley agreed to the amendment. Roll was called for the vote. The motion passed unanimously.

New Business

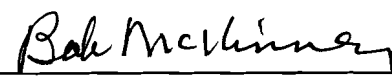
There was no new business.

Adjournment

Raley moved to adjourn. Pettigrew seconded the motion. Roll was called for the vote. The motion passed unanimously.

  
MARILYN HUGHES, Executive Director

Approved on Behalf of the Commission:

  
BOB MCKINNEY, Chair

PB/pb