

MINUTES OF THE PUBLIC HEARING AND REGULAR MEETING  
of the  
ETHICS COMMISSION  
STATE OF OKLAHOMA  
held  
MARCH 12, 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 public hearing and regular meeting of the Ethics Commission of the State of Oklahoma ["Commission"] was called to order on Friday, March 12, 2010, at 10:00 a.m. Chairwoman 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, Bob McKinney ["McKinney"], Karen Long ["Long"], Jim Loy ["Loy"] and John Raley ["Raley"]. 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: Lee Slater ["Slater"], Slater & Denny; John Wood ["Wood"], Common Cause Oklahoma; Amy Alden, attorney, and Arnella Karges ["Karges"], House Staff; Caroline Dennis, Senate staff; H.J. Reed, lobbyist, ConocoPhillips; Arnold Hamilton, *The Observer*, Michael McNutt, *The Oklahoman*, Shawn Murphy, *Associated Press*; Mary Francis ["Francis"], citizen; and Michael Ridgeway ["Ridgeway"], General Counsel, Insurance Department.

Public Comment on or  
Request for Constitutional  
Rule Amendments

The first 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. 2009, 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 March 12, 2010 Regular Meeting of the Ethics Commission.*

Proposed Rule Amendment #1 would eliminate the need for a notarized verification of campaign contributions and expenditures reports [Form C-1R or C-3R] and reports of last minute contributions/receipts [Form C-4R]. Instead of filing a Form C-VR - verification of C-1R, C-3R or C-4R - filers would, by filing online or by paper, certify that the report is true and correct and that they are authorized to file reports on behalf of the committee.

There were no comments from the public.

Public Discussion On  
"Gift" Or "No Gift" List

The next item of business was public discussion on a "gift" or "no gift" list, including presentation by Michael Ridgeway, General Counsel of the Insurance Department, on that agency's approach to giving and receiving gifts.

Speakers  
Ridgeway

Ridgeway explained that, prior to 1995, the Insurance Department had a tarnished reputation. When the new commissioner took office in 2005, they met with the Commission's Director and General Counsel and developed a policy and took a stance that employees would not accept anything of value. Although in the Ethics Rules the definition of "anything of value" includes a long list of exceptions, for their purposes of applying the Ethics Rules to their employees, they eliminated the exceptions.

Ridgeway explained some problem areas that he addressed in the one-page summary he provided to the Commission. He then stated that the result of this policy had been that the current commissioner had restored the integrity of the Oklahoma Insurance Department and that a number of other insurance departments had adopted the same policy, along with the Insurance Product Regulation Compact, a compact of 38 or 39 states. Other states, such as Texas, had adopted a policy that prohibits any of its state employees or officials from even accepting a cup of coffee from anybody that they regulate or any lobbyist.

In conclusion, Ridgeway said that he was not there to argue for or against the proposed list so much as to explain the experience of the Insurance Department and the result of turning around the public perception of the Department and the office of the Commissioner.

Ridgeway then passed out a survey which they use prior to hiring an employee to determine whether the employee has relatives who work in the industry and whether they have accepted or received anything of value. Employees are then surveyed every year.

Wood

Wood said he appreciated Ridgeway's comments. He was in favor of the Ethics Commission maintaining a link on its website for those who wished to be on a "no gifts" list. He acknowledged there were other websites available, but he advised both he and Representative Jason Murphey preferred it to be on the Commission website so it would always be neutral and not perceived as biased.

Francis

Francis said she was a private citizen and a voter, but she was also interested as Chair of the Norman Enforcement Authority. The authority receives contribution and expenditures reports for Norman city council, mayoral races and committees. She stated that the polls all showed that there was a great deal of suspicion among the citizenry and the voters. She was hopeful that having a "no gifts" list would help clear up some of the clouds that can hang over a legislator's head when they accept gifts. She preferred that it be a link on the Ethics Commission website.

Slater

Slater said he thought it was a bad idea. He thought we would have other requests like this in the immediate future. The Rules, he said, cover 40,000 state employees. Why was the list to be limited to legislators? Instead, there could be a list of lobbyists who would not make gifts to legislators or a list of candidates who would not accept contributions from political action committees. There was nothing to keep any of those people from doing that right now. And, he said, there were other elected officials, besides Commissioner Holland, who have similar stringent policies.

The Chair asked whether Slater had any opinion if it was wise for the Commission to do something without adopting it as a rule. Generally speaking, he thought the law said that state agencies could only do what the Constitution and the Statutes allowed them to do. They could engage in activities that were ancillary or that were necessary to accomplish those ends. So, he thought it might well be that the Commission did not have lawful authority to link to a private website.

Francis

Francis read from a letter signed by several legislators. "As legislators, we do not enjoy being listed for receiving gifts which we do not desire or request. In the past, these gifts have been mailed to legislator's homes, left at our offices, or placed on the desks of legislative

assistants even when no one was in the office. These actions force us to spend resources and time tracking down the lobbyists and returning the gifts. In addition, lobbyists sometimes enter in their report across-the-board gift giving which includes our names, even though we are not present to accept the gift.” She thought this was a real imposition and could very easily be solved by having a simple place to register “no gifts, please”. She felt that place ought not to be offsite, but that it should be a link on the Ethics Commission’s website.

Slater

Slater said that idea would not stop that problem.

Wood

Wood said it was disclosure and that it would be up to lobbyists to know who was on the list.

Action on the matter followed. Long moved that the Commission reject the proposal. McKinney seconded the motion. Roll was called and the motion passed 4 to 1, with Raley voting no.

Consideration and  
Discussion on Assessment  
Fee Schedule for 2010-  
2011

The next item of business was consideration of and discussion on assessment fee schedule for 2010-2011. Hughes said the last time the fee schedule was adopted was for the 2008 election cycle. At this time, it needed to be re-adopted for the 2010 election cycle with any changes that the Commission would like. She advised the rates had not changed for at least ten years or longer.

After discussion, McKinney moved to adopt the assessment fee schedule with no changes. Loy seconded the motion. Roll was called and the motion passed unanimously.

Consideration of And  
Discussion On Adopting  
Form for Waiving Notices  
and Hearings on Late Fee  
Assessments

The next item of business was consideration of and discussion on whether to adopt a form for waiving notices and hearings on late fee assessments. Hughes said the House Budget Committee this year had criticized the Commission because there were members who wanted to pay their late fees and were asked to wait until they received notices and were given the opportunity to either ask for a hearing or not. They just wanted to be able to pay it after they had filed their report and could figure up the number of days they were late.

The waiver, she said, was developed so that filers could waive any right to notices or hearings.

Slater asked if the waiver would also apply to financial disclosure. Hughes said it was drafted to apply to candidates and non-candidate committees, but another could be drafted for financial disclosure.

After discussion, Hughes suggested staff redraft the waiver to make it applicable to county candidates, state committees and financial disclosure but that it be adopted subject to those changes. McKinney moved to adopt the waiver as it would be amended. Long seconded the motion. Roll was called and the motion passed unanimously.

Approval of Minutes

The next item of business was approval of the minutes. Long moved adoption of both the public hearing, regular session and executive session minutes for the meeting of January 22, 2010 and the public hearing and special meeting of February 1, 2010. McKinney seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously.

Reed asked if the transcript of the February 1, 2010 meeting would be available on the Commission's website. Hughes said transcripts were not compiled of either the January 22 or February 1, 2010 meetings. Approved minutes would be available today on the website, and digital recordings were available.

Ratification of  
Expenditures

The next item of business was ratification of expenditures. Loy moved to ratify agency expenditures, as disclosed, for the period of January 1 through and including January 31, 2010 and February 1 through and including February 28, 2010. McKinney seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously.

Consideration and  
Discussion on Commission  
Audit Report for January 1,  
2007 Through December  
31, 2008

The next item of business was consideration and discussion on the Commission Audit Report for January 1, 2007 through December 31, 2008. Hughes said this audit covered a two-year period. The one before had covered an 18 month period. One of the things addressed was segregation of duties. She reported Patti was now training both Charles and Janice on many of her duties, so there would be more delineation of duties than in the past.

Another issue was deposits. She advised it was very difficult to make deposits as often as required, which auditors acknowledged, since the amount had been \$100 for at least 22 years. She said for the most part, \$100 was received every day of the year. One lobbyist fee was \$100. Two PACs were \$100. If a deposit were made in the morning, then if \$100 were received later that day, another deposit must be made

that same day. Bryant then explained the deposit process and the fact that she was training Charles and Janice to do all financial duties. She stated that, in the future, deposits would be made each day, as needed. And all of the concerns in the audit had already or would be addressed.

Karges was recognized and stated that part of her job was to oversee the House internship program. Some of their interns, she said, come from the Carl Albert Internship Program at OU. Those interns could be assigned to any state agency. She suggested they might be able to assist Commission staff. She stated they were not paid, but received college credit.

After discussion, it was suggested that the Executive Director report periodically to the Commission on the progress being made to correct the problems listed in the audit and to report back to the State Auditor on the Commission's progress.

FY-2011 Budget Request

The next item of business was the FY-2011 Budget Request. Hughes stated she has nothing to report except that the two Senate bills on the appropriations made it out of the Senate. The House bills did not. So she is assuming our appropriations will be in Senate bills this year. They are SB 1439 and 1440. She has not heard anything further.

Administrative Report

The next item of business was the administrative report. No action was taken.

Pending Legislation Report

The next item of business was pending legislation report, consisting of the Director's update on pending legislation which might affect the Ethics Commission. Hughes said the report was updated as of yesterday, March 11. The most significant bill was HB 1903. That bill, originally authored by Representative Rex Duncan, but now authored by Representative Gus Blackwell, would rename the Ethics Commission, the Oklahoma Elections and Campaign Reporting Commission. She advised the committee substitute passed the House Rules Committee on February 26. On March 11, the title was stricken and the bill passed the House 79-17. It was referred to the Senate for endorsement.

Chairwoman Pettigrew advised that Representative Gus Blackwell had called her early yesterday morning to tell her that the bill was going to be up on the House floor and to see if the Commission had any position on it. She told him the Commission did not have an official position as of yet, but would meet today and would certainly discuss the bill. She encouraged him not to take final action on it until members had

that opportunity after which he agreed to strike the title before the vote. That would require the House to look at it again. They will have to have a final vote. No vote of either House would be final until the title was back on. The bill would now go to the Senate. If the Senate restored the title, it would come back to the House for a vote with the title back on. If the Senate did not restore the title, it would go to a conference committee and both Houses would see it again.

First, the Chair advised she appreciated Representative Blackwell contacting her. Second, she personally very much opposed the bill.

Pettigrew opposed changing the name of the Ethics Commission. It was voted on by the people in a constitutional amendment. The voters determined that this should be the Oklahoma Ethics Commission. It was not named by the Legislature. It was the voters. She questioned the legality of trying to change the name through statute since it was a constitutional amendment. If it were changed, she said, it should also be done by the voters.

Although some might think it passed muster as an acceptable change by statute, she questioned the wisdom of doing so. She thought it would be going against or negating the voice of the voters. Whether it could legally do it was one thing. Whether it was a wise move was another. She thinks it was not.

Finally, she said, perception was reality. If the name of the Ethics Commission were changed, it would imply that Oklahomans did not care about being ethical. She denied that was true. "I know Oklahomans. I know they support ethical behavior. You may change our name, but it looks like you are trying to change ethical necessity. That to me is a very unwise move. And as I've said, perception is reality. It just doesn't look good for the State of Oklahoma. I further question, then, what we would do with all of these rules that are governing ethics. The bill doesn't do anything to change our rules that are in place. If we are going to just be a depository for funds and oversee campaigns, what about all of these other things that we've been doing? We have struggled month after month to develop rules on ethical behavior which, I think, are valuable. I think they are helpful. I think that's what we are here for. I think that's what the voters wanted. And I would contend that it leaves us out in limbo also if they take away our name."

In summary, the Chair stated there were some other little things such as changes in stationery, in booklets, and in pamphlets. Although minor issues, these she thought should be noted.

She closed by saying she did not like the bill at all. But, she honored the call from Representative Blackwell. She felt, however, it was not a wise move and supported the Commission opposing the bill.

After supportive discussion by all commissioners, it was unanimous that House Bill 1903 changing the name was not appropriate. The Chair stated she would get back with Representative Blackwell and tell him how strongly members opposed it. She suggested that if it still moved forward, a letter could be written and signed by all members opposing the bill.

Hughes reported that most of the other bills on the list were dead because they failed to meet the deadline coming out of committee or the House of origin. The Commission's appropriation bills were still alive.

There was discussion on the Commission's request for the Legislature to increase lobbyist fees.

Hughes pointed out that SB 1741 would have conformed Statutes to *Citizens United vs. Federal Election Commission*, but it failed in the Senate March 11, 2010, on a vote of 24-21. She thought it might be revived in another bill that did make it out of the Senate.

Senate Bill 1849, Hughes said, would have quite an effect on the agency's ability to adopt administrative rules. While it would be too late this year to get rules to the Legislature by April 1, the bill would eliminate emergency rules completely. And it would move the date to submit rules up to the first Monday in February. If rules were submitted in March, they would not be considered until the next session, and the Legislature would have the whole session then to consider the administrative rules.

Hughes clarified these would not be constitutional rules but administrative procedure rules. If the Commission were to amend its rule requiring certified mail for assessments, it would have to go through this procedure, and it would not be considered until the next legislative session.

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 stated 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 purpose of these listed matters.

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

The Chair declared that, once the observers left the room, the meeting would stand in closed/executive session for the limited purposes of considering the cited matters. After the room was emptied, except for the Commissioners and staff, a "closed session" sign was posted on the door, and the session began.

Open Session/Action on  
Same

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

Action on Informations


McKinney moved that IU-2009-003 be continued; that IV-2009-009 be continued; that with respect to IU-2010-001 the Commission decline to open an investigation for lack of jurisdiction; that with respect to CV-2010-002, the Commission open the matter for purposes of notice and conciliation; that with respect to CV-2010-003, the Commission open the matter for purposes of notice and conciliation; and that on IU-2010-004, the Commission take no action. Raley seconded the motion. Roll was called for the vote. The motion passed unanimously.

New Business

There was no new business.

Adjournment

McKinney moved to adjourn. Loy seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously.

  
MARILYN HUGHES, Executive Director

Approved on Behalf of the Commission:

  
JO PETTIGREW, Chair

PB/pb