

MINUTES OF REGULAR MEETING
of the
ETHICS COMMISSION
STATE OF OKLAHOMA
held
MAY 8, 2009

Call to Order

Upon notice with agenda being properly posted at the principal office at least twenty-four (24) hours previously and notice being filed at least ten (10) days in advance with the Office of the Secretary of State, a regular meeting of the Ethics Commission of the State of Oklahoma ["Commission"] was called to order on Friday, May 8, 2009, at 10:00 a.m. Chairman John Raley ["Raley"] presided over the meeting which was held in Room 419C, State Capitol Building, Oklahoma City, Oklahoma.

Determination
of Quorum

Roll was called to determine the existence of a quorum for the transaction of business. Commissioners answering present were: Raley, Bob McKinney ["McKinney"], Jo Pettigrew ["Pettigrew"], and Don Bingham ["Bingham"]. 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; Patricia Bryant ["Bryant"], Principal Assistant; and R. Darey Roberts, Investigator. Observing all or part of the meeting were: Lee Slater, attorney; Michael McNutt, *The Oklahoman*; Caroline Dennis, Senate staff; H.J. Reed, lobbyist; Scott Cooper, *Oklahoma Gazette*; Shawn Ashley, *Capitol Network News*; Ron Jenkins, *Associated Press*; Travis Doussette and Dave Jordan, KWTW News 9; and Jeff Packham, *Journal Record*.

Public Comment on or
Request for Constitutional
Rule Amendments

Next was a public hearing consisting of taking testimony and comments, as well as consideration of, and discussion on, promulgation of amendments and/or modifications to the Constitutional Ethics Rules ["Rules"], Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp. 2008, Ch. 62. App., and/or adopting resolution(s) to request legislative action with respect to new items introduced for discussion or those listed in the published document titled: *Rules of the Ethics Commission, Proposed Amendments and/or Drafts for 2010 Legislative Session for consideration at the May 8, 2009 Regular*

Meeting of the Ethics Commission, incorporated by reference in this agenda as fully set forth in the document.

The Chair stated, "We will move on to the first item on the agenda. We have already discussed all of these rules at one time or another. Is there anyone present on the Commission or members of the public who are here who would like to bring up something new about these rules? We would be pleased to hear you at this time. As all of us know, the rules will be voted on at our meeting in January along with other rules submitted during the intervening period of time. Is there anyone who has any comment or any suggestion about any of the pending rules? Now is the time to discuss it."

There were no comments. No action was necessary.

Discussion on Whether to
Adopt Resolution
Requesting Legislative
Action with Respect to the
Oklahoma Open Meeting
Act and the Oklahoma
Open Records Act

The next item on the agenda was discussion on whether to adopt the following resolution requesting legislative action with respect to the Oklahoma Open Meeting Act and the Oklahoma Open Records Act.

WHEREAS, the original Ethics Commission ["statutory Commission"] was a creature of the Legislature. It was established by statute in 1986. Title 74 O.S. Supp. 1986, Section 4207(F) of the Ethics Commission Act ["ECA", now repealed] mandated the confidentiality of proceedings before the Commission. The provision assured that all records relating to complaints, reviews or investigations were protected as confidential and not open for public inspection. The Legislature set the penalty for disclosing confidential information at \$10,000 — ten times greater than a violation of the ECA; and

WHEREAS, the statutory Commission had many weaknesses. In 1990, the people of Oklahoma voted two-to-one for a constitutional Ethics Commission ["Commission"]. It was authorized to write civil penalty ethics rules governing state campaigns and the ethical conduct of state officers and state employees. The Commission was also given subpoena power and the authority to investigate and prosecute in district court violations of its rules. As part of that grant, the Commission adopted procedures for opening and conducting investigations and prosecuting complaints; and

WHEREAS, the Constitutional Ethics Rules [Section 257:1-1-1 et seq. of the Ethics Commission of the Rules of the Ethics Commission, 74 O.S. Supp. 2008, Ch. 62, App.], at Section 257:30-1-1 et seq., establish these procedures. For a period of about one year, these provisions operated alongside those of the ECA. Both protected from disclosure actions and records relating to alleged violations. In 1995, the Legislature

repealed the ECA. The Commission's rules thus became the sole authority on confidentiality of its investigations and prosecutions;

WHEREAS, the Commission has become subject to a recent lawsuit challenging its rules of protecting its investigations from public disclosure. At issue are the rules of confidentiality with respect to informants and witness statements, as well as the identity of persons responding to Informations or Complaints. The Commission believes its Rules trump the Open Meeting Act and the Open Records Act. Nevertheless, in an effort to allow the Legislature to restate its consistent legislative will since the formation of the statutory Commission in 1986 that such matters remain confidential, the Commission has drafted proposed modifications to these statutes for its consideration.

NOW, THEREFORE, the Commission hereby adopts this Resolution and requests that the Legislature enact the following amendments to the Oklahoma Open Meeting Act and the Oklahoma Open Records Act as follows:

OPEN MEETING ACT

§ 307. Executive sessions

A. No public body shall hold executive sessions unless otherwise specifically provided in this section.

* * *

C. Notwithstanding the provisions of subsection B of this section, the following public bodies may hold executive sessions:

* * *

11. The Oklahoma Indigent Defense System Board for purposes of discussing negotiating strategies in connection with making possible counteroffers to offers to contract to provide legal representation to indigent criminal defendants and indigent juveniles in cases for which the System must provide representation pursuant to the provisions of the Indigent Defense System Act; ~~and~~

12. The Quality Investment Committee for purposes of discussing applications and confidential materials pursuant to the terms of the Oklahoma Quality Investment Act; ~~and~~

13. The Ethics Commission for purposes of discussing informations, investigations and complaints pertaining to violations and alleged violations of effective Rules of the Ethics Commission promulgated pursuant to Article XXIX of the Oklahoma Constitution. The Ethics Commission may refer to such matters on the public agenda by the internal matter number assigned by the

Commission rather than by the name of the individual accused of an ethics violation.

25 O.S. Supp. 2008, § 307©

OPEN RECORDS ACT

§ 24A.8a. Ethics Commission records

The Ethics Commission shall keep confidential all records that are declared confidential by an effective Rule of the Ethics Commission promulgated pursuant to Article XXIX of the Oklahoma Constitution.

51 O.S. Supp. 2008, § 24A.8a

The Chair asked, “Ms. Hughes, is there any opening statement that you would care to make before we take action or discuss whether or not we should take action on this resolution?”

Hughes answered, “I would just say that the impetus of the amendments would be just for the Legislature to confirm that the Ethics Commission sets its own rules in regard to confidentiality in its constitutional rules.”

The Chair stated, “I, for one, think that it is needed. I think it’s proper. I think it’s meritorious. Does anyone on the Commission have a comment that they would care to make about this resolution?”

Bingham responded, “Mr. Chairman, I just want to air my view that this resolution is in some sense unnecessary. I favor it. I think we ought to express our will to the Legislature, but from a legal standpoint, I believe that our rules, as currently constituted, are valid, are enforceable, and, in fact, are authorized by the Constitution. In addition to the express provisions of the Oklahoma Constitution, they give us the duty and authority to keep records confidential.

“I think since the people of Oklahoma established us as a constitutional body, we have some inherent power — just like the judiciary does — to determine the confidentiality of our own records. The Supreme Court is authorized by the Constitution, certainly implicitly if not expressly, to make those types of determinations. I believe that this Commission is also, but it certainly wouldn’t hurt, and it might be helpful in litigation or elsewhere, for the Legislature to codify this in the statutes.”

The Chair remarked, “Commissioner Bingham, I of course have high regard for your legal opinions. And so, let’s just ask you a hypothetical question. If we were to adopt this, do you see that this might in some way diminish the effect of what is already in the Constitution?”

Bingham answered, “I think we all know that no resolution is going to alter the terms of our constitutional grant of authority. I think that the person who moves for adoption of this, assuming there is a motion, can make clear that, as far as his or her motion goes, this is not to be deemed as any acknowledgment that what we are doing right now is invalid or unauthorized but simply is an additional protective measure.”

The Chair asked, “Does anyone else have a comment about the proposed resolution?”

Pettigrew stated, “My question is just this. Is it necessary to have the resolution or is it — even if we ask for this change in the law — is the resolution significantly important that we should include that?”

Hughes answered, “The only way the Commission can speak is through a vote. Individually, you could ask for something. But, as a Commission, you can only ask for something with a majority vote. So, the resolution simply puts that before you to where you could act on it, and we could then take it to the Legislature and say, this was the Commission’s will. That’s how you say you want it.”

The Chair said, “Ms. Hughes, let me ask you a question — a legal interpretation on the import of this resolution. Does this in any way add to what is already in the Constitution? Does it subtract from or does it more clearly define it?”

Hughes answered, “It does not change the Constitution in any way — to add to, detract from — at all. All it does is ask the Legislature to confirm by statute what they previously had in a statute about the confidentiality of the Commission’s records. And, it simply says that whatever the Commission’s promulgated rules state, which they have an opportunity to disapprove, is the law.”

The Chair asked, “Does anyone have any further questions of Ms. Hughes?”

Bingham said, "I would just like to ask our General Counsel, I'm always happy to have another lawyer to point out the error of my ways. Do you feel like we've gone too far?"

Adams said, "I totally adopt your statement. That is absolutely correct. It is our view, it is my view — and I share it with you — that the Constitution speaks for itself, that we have always had these powers. But, the resolution would be — and I like the way you phrased it, Commissioner — an additional protective measure. It would give the Legislature an opportunity to reaffirm what has always been the legislative intention from the point of the old Ethics Commission Act that has been repealed.

"That is my legal interpretation; that is our view. So, I totally agree with what you are saying, and I also adopt what Ms. Hughes has said."

Bingham said, "For those of you who have not heard us talk, we haven't talked much because it hasn't really ever been challenged. To the extent that we've talked about confidentiality — I'll speak for myself — if a complaint is filed against an individual, an officeholder or whomever, and even if it is a verified information or complaint, that individual is presumed innocent.

"We certainly don't presume guilt or think that the mere accusation carries any weight. We just begin to look at the evidence and do an investigation. But, while we investigate, that person shouldn't be smeared in public. It just is fundamentally unfair, and second, it would be another phenomenon that would make people even more reluctant to run and hold public office than they are now.

"We want to encourage people to run for and hold public office rather than to discourage them. But, if they think that somebody could file a frivolous complaint against them, and their name could become publicized as someone who might be guilty of something, then they may think it is not worth even trying to put themselves out there."

The Chair said, "Thank you, Commissioner Bingham. Does anyone else have a comment? I share some of the comments expressed by Commissioner Bingham to a certain extent particularly about maintaining the confidentiality of someone who is accused. As all of us know, there is a long stretch between an accusation and a conviction. What brief period of prosecutorial experience I've had, it's been my

thought all along that the hardest job of a prosecutor is not determining when to file a complaint or seek an indictment; it is when not to do so.

“In that respect, we don’t want to do anything that would unintentionally soil the reputation of anyone who is seeking public office, or is in public office, because of what is essentially a frivolous complaint. For that reason, I think that it is extremely essential that we maintain a strong sense of confidentiality when discussing these matters in executive session or otherwise promulgating them afterwards.

“So, anyone else have any comment about this? I don’t want to put you on the spot, Mr. McKinney, but you are new to us, and we value your opinion.”

McKinney answered, “Thank you. I’ll second Commissioner Bingham’s comments. Just recently, under the investigation that we have had, the information I have read on past investigations, and the one we are involved in now, you don’t want to have somebody’s reputation smeared.

“We ask our investigator to go out and get as much information as he can. We also ask someone during the investigation to be as confidential as they can. That goes along with not smearing somebody. We are trying to do it as confidentially as we can and to get all of the information that we can.

“I go along, too, that you want as many to run for public office whether it’s on a county level or a state level or a national level. If they know that during our investigations it is just out there for everybody to hear and to see, I don’t think you’ll get the quality of people we want in there if that’s allowed.”

The Chair said, “Let me ask a question, sort of a practical question here. The last line of the resolution, ‘Now, therefore, the Commission hereby adopts this Resolution and requests that the Legislature enact the following amendments to the Oklahoma Open Meeting Act and the Oklahoma Open Records Act as follows:’ Then there follows the amendment. It is a resolution only. We are requesting or suggesting that the Legislature enact a statute that would encompass this.

“What would be the effect if the Legislature does not do anything — does not take it up? It never comes to a vote. The resolution, for all practical purposes, is ignored. What would be the political effect or the

practical effect, and how would that impact us on the nature of confidentiality that we depend upon to do our job? Does anyone have an answer to that?"

Hughes said, "I don't believe it would have any effect at all. It's totally within the discretion of the Legislature whether they accept this resolution and act on it, too — the Open Records Act and the Open Meeting Act. But, if they don't, the Constitution still stands as it is, and the Rules still stand as they are."

The Chair responded, "Alright. Does anyone else have any comment? If not, the Chair will entertain a motion that the resolution be adopted."

Bingham said, "Mr. Chairman, I move that the Commission approve and adopt the resolution, as drafted, authorizing you and directing you as the Chair to sign the resolution, have it attested and transmitted to the appropriate legislative leadership with the understanding that we believe we have the necessary powers to maintain and preserve confidentiality today, and that these requested amendments would not actually increase our power to keep confidential matters confidential but certainly would increase our ability to defend our rules if and when they are challenged. And with those comments, I move that we approve the resolution and authorize you to sign it and transmit it to the Legislature."

The Chair said, "Thank you, Commissioner Bingham. Are you suggesting, as part of your motion, that your sentiments be included in there as well?"

Bingham answered, "No. I think it is well written as it is drafted."

The Chair said, "I understand. The motion is on the floor. Is there a second?"

McKinney so moved. There was no further discussion. Roll was called for purposes of the vote. The motion passed unanimously.

Discussion on Verifying
Electronic Filings

The next item was discussion on verifying electronic filings. The Chair asked, "Ms. Hughes do you have any comment on that?"

Hughes said, "What we did is provide you the sentences that are in our current electronic filing system, that once they — like the first one

says, 'By submitting your registration to the Oklahoma Ethics Commission, you certify that the information is accurate and that you are appointed to file campaign contributions and expenditures reports on behalf of your committee' — once they sign that, that's sort of the verification that they are the appointed officer.

"The one for the C-1R we feel is really insufficient. It just has a submit button with the date and then it says, 'You have successfully filed your C-1R. Click here to print a copy of the C-1R submitted.' We probably are going to recommend to you that language be prepared similar to the SO-1 language where before they hit the submit button, there is language that appears where they verify the content is accurate and correct."

The Chair said, "Alright, Ms. Hughes. You are asking us to approve the concept, and then you will come back with some language specifically?"

Hughes said, "Yes, it's not as good as a sworn affidavit that your report is true and correct. But, what we were talking about in the last meeting was what we can do with the electronically filed report. And, I think that we can come up with some language that would be strong enough to help a great deal, short of a notarized signature."

The Chair said, "This seems reasonable to me. We need to take some action to give the staff some direction here, and I suppose we can accept the concept of it and ask staff to come forward with some language."

Hughes said, "Probably until we come forth with language for it, you wouldn't need to take action."

Adams agreed, "No action is necessary. We just wanted to give you a report."

The Chair said, "Upon consent then, let's ask staff to come forward with some specific language, and we will put that on the agenda for our next meeting.

Pettigrew said, "Thank you for doing that. I appreciate it."

Discussion of a
Comprehensive Review of
Ethics Rules

The next item was discussion of a comprehensive review of ethics rules. The Chair said, "The staff prepared for us last month a list of suggested changes or amendments to rules. We've had a chance to look that over the last several weeks. Is there any discussion about those proposed amendments submitted by staff?"

Bingham said, "Mr. Chairman, I want to confess that I've reviewed these, but they are not fresh in my mind. Are you thinking that we may take a vote today?"

The Chair answered, "No. I think we ought to just — if we do anything at all, we can discuss them.

Pettigrew said, "Mr. Chairman, do we have that document out for the visitors?"

Bryant answered, "Yes."

Pettigrew said, "I think what we are doing — we're just right on track. I think to have these things out where people from the public can view them and that we can get some feedback. We've got plenty of time before we will be voting on more rule changes. I just like the idea that we have a lot of things out to be thinking about."

The Chair said, "The list was provided in our packet last month. I have a copy of it here. I want to make a comment about the first suggested amendment — clarifying what is 'political activity' which is currently an approved expenditure from campaign funds. There has been a lot of thought about that and some misunderstanding about it. I think this body should look into a more definitive account of what 'political activity' is — what it is and what it may not be. I don't have any specific wording in mind, but I would like for us to discuss it.

"Another one on the list is 'requesting the Legislature to change the assessment statute to allow the Commission to keep late fees as appropriated monies in its Revolving Fund.' All of us know at the present time the assessed late fees go into the General Fund. And, the amount of funds that finally make it to the Ethics Commission is so minuscule that we are scratching around for any funds at all.

"Since this Commission is the agency that collects them, it seems reasonable to me that some measure or some portion of them should come back to the Commission. We don't need to take any action on these

today. It is just something for us to think about, and we can discuss them later.”

Pettigrew said, “I would like to add something on that one that you just commented about. I did like the idea brought up by Commissioner McKinney that somehow it might be a process of submitting it to the state but to be sent back to the Ethics Commission — just in case there is any question at all about whether or not we are somehow going out and deliberately finding things that perhaps don’t even exist to try to increase our funding. I want us to keep our minds open, and if Mr. McKinney or anyone else has any further ideas about that, I would like to consider them.”

The Chair asked, “Mr. McKinney do you have any comments?”

McKinney said, “No.”

Hughes said, “I would just like to say that proposing or requesting a rule change is something that any member of the public can do. So, if someone sees something on the list that they would like to see done, then they can ask for that to be drafted whether it is a Commissioner or a member of the public.” There was no further discussion.

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

The next item was discussion on whether to amend the Commission’s archiving schedule for disclosure documents. The Chair asked, “Is there any discussion on that? We heard from Mr. Knight last month on that, and it is proposed to reduce it from 42 to 20 years.”

Lee Slater [“Slater”] was recognized. He stated, “I have a question for clarification purposes. I understand the problem with the storage of the documents. Would this be the destruction of all records including microfilm or scanned records — scanned documents?”

Hughes answered, “...all the records, including electronic filings, scans, microfilm, whatever form you’ve got them in. According to the Archiving Commission, that is what destroying the records means.”

Slater said, “Mr. Chairman, at the appropriate time, I’d like to be heard on this.”

The Chair said, “This would be a good time, Mr. Slater, because I see what you are driving at, and I think I agree with you. I think I have

the same concern. Expungement apparently means expungement in the legal sense.”

Slater said, “I guess that’s what gives me some heartburn. I certainly have empathy for the Commission’s desire to preserve the space. While I have no personal interest in the historical significance of the records that are maintained now, I think there are people who do have or will have — the news media.

“I would hope just before a record is ultimately destroyed so that nobody can find out what a campaign contribution form from 1974 looked like, I would hope that this Commission would consider what the cost is of either scanning or microfilming those documents and preserving either the scanned copy electronically or the microfilmed document. It requires much less space and preserves the record for posterity.

“Again, I have no personal interest in it except that I have had the unfortunate experience of trying to obtain records in the past that have been destroyed. And, it’s a very frustrating experience. I would suggest you might want to consult with other Ethics Commissions and political scientists — those who might in the future have an interest in those old records.

“If the expense is not too great, then I would suggest that perhaps funds could be found from some source. I presume there is no immediacy, no urgency — three or four months?”

The Chair answered, “Your statements are well taken, and as a very amateurish historian, I have the same concern that you do. I think Ms. Hughes may have already addressed the archivists about this particular question as to whether electronic filing would be continued on. That material would be salvaged electronically. I think you told me that it would not.”

Hughes said, “That is correct. Right.”

Pettigrew said, “Mr. Chairman, I think what Mr. Slater may be leaning toward, if it’s not too great an expense, we could put it all in electronic [format] after a certain number of years and still maintain it electronically and get rid of the boxes of things. Is that a possibility that fits within the law?”

Hughes said, “No. If you maintain — I mean I don’t know whether you can destroy and keep the records, but according to the Archiving and Records Commission, when you set a schedule like we’re talking about for 20 years for records, then all of the records prior to that can be — that are on the schedule — are done away with no matter what kind of format they are in — whether they are on a CD or filed electronically up on the internet or scanned or microfilmed or whatever. All of the records are expunged on that.

“You know, maybe we need to go back to the Archiving Commission and say, ‘Can we get rid of the paper and not the electronic reading of the record.’ But, I had Charles check on that twice with them because I didn’t like the idea myself.”

Slater said, “I was just trying to say that, even if the ‘official records’ are by law required to be destroyed at some point, I think it would be valuable to have CDs or whatever the medium is — and I’m not knowledgeable enough on electronic media — but somehow to preserve that because I think you could put everything that’s ever been filed probably in this coffee pot — or even smaller, perhaps. And, I just think that would be a tragedy to have the documents today and not have them tomorrow when space shouldn’t be an issue if they are transferred to electronic [format].

The Chair said, “I agree with you.”

Bingham said, “I’d like to make an inquiry of our General Counsel. Rebecca or Marilyn, are we required to destroy records that we are currently preserving?”

Adams said, “Marilyn has talked with the people.”

Hughes said, “Patti, do you have anything to say?” Bryant answered, “No.”

Hughes said, “I think we’re right now at a schedule of 42 years. So, that was one of the points that the Legislature brought up in the hearing on our budget was that 42 years is ridiculous, so we started talking to the Archiving and Records Commission, and they said commissions or boards originally set that for long periods of time. Most of them found out that they couldn’t maintain those records for that length of time because they just didn’t have the space.

“So, they have since amended their schedules, and you can do the same. You can come back to the Archiving and Records Commission and recommend whatever you think is needed, and they’ll hear you and whoever else wants to speak to it, and then they will make the determination. That’s where we are at — for you to decide what your recommendation is to the Archiving and Records Commission.

“If you need more information, there is no hurry. They have four hearings, once every quarter, right? So, you don’t have to make up your mind now. We can find out more information — find out if we can put these records in a format that, as he says, takes up no more room than the coffee pot — and keep them indefinitely.

“The only problem is it would take us a long period of time to put these kinds of records in that format because we would have to retrieve them from Archives, and we would have to scan them. We’d have to get them in a format that we could keep. And, that takes staff time that we are certainly going to be very short of. We are now, but next year is even worse with the election.”

Bingham said, “I would like to know if — and again, this isn’t urgent — but I would like to know whether or not there is a statute that requires us — that we fall within the purview of — that requires us to destroy records. In other words, [are we required] to have some schedule whether or not it is 42 years or 4 years?”

“And, if there is, then maybe, Rebecca, you could just email us a copy of the statute. Then again, if there is such a statute, I just wonder if constitutionally it can be applied to us. The Commission says we are to keep certain records. These are not necessarily confidential records. I think these are public disclosures, right? We might look at whether or not we really are bound by that statute if that statute even exists.

“I agree with Marilyn. I would bet that when we — if we have the authority to put all of this information that is now on paper or whatever — if we have the authority to put it on CDs or some medium like that, the expense of doing that to the Commission would just be enormous. I mean, if we can determine about what it is going to cost — and I’m just saying we can all expect realistically that that cost would be enormous — that would be a good and worthy basis for asking for more money especially for that specific project.

“I think the preservation is a good idea. But again, I just want to point out publicly that even a good idea like this one might not be achievable just for lack of people and money. It will be real expensive to scan all of that in. It is a laborious, I mean, a time-consuming process. Physically, you’ve got to get all of these boxes to where the scanner is.

“Marilyn, when we started thinking about this — I remember when it came up in the legislative committee meeting. Did we start thinking about this because we are paying for space in which we store paper boxes and things?”

Hughes answered, “Patti said that is pretty negligible.” Bryant answered, “It is \$90.50 a month.” Hughes said, “That is what we are paying for the storage of the older records — everything before 2000 is in archives. We are paying \$90 a month for that. But, that includes all the way back to the county records that were sent to us before we were formed.”

The Chair summarized, “Some very important questions have been raised, and we need some answers. There is no urgency on this matter. So, I suggest that we allow staff to investigate and provide us some answers, and we will put this on the agenda for a later meeting.”

Discussion on Whether to
Request That the
Legislature Change the
Assessment Statute to
Allow Commission to Keep
Late Fees as Appropriated
Monies in Revolving Fund

The next item was discussion on whether to request that the Legislature change the assessment statute to allow the Commission to keep late fees as appropriated monies in its Revolving Fund.

The Chair said, “We discussed this briefly a while ago. Is there further discussion on this? This would be a request for statutory authority.”

Bingham asked, “Rebecca, would you email me the statutory cite on that statute that makes it go into the general fund?”

Adams said, “And also, because of the suggestion that Commissioner McKinney made and that Commissioner Pettigrew today spoke to about structuring this in such a way that all of the late fees, instead of to us, would go to the Treasurer with perhaps some mechanism for applying some of it back. We have no proposed language to that effect at this time. You might want to direct staff to come up with some proposed language for that.”

Pettigrew said, "Even though the legislative session is not over, I think it's a little late to try to come up with a concept that we would ask them for at this late date. So, I suggest that the staff pursue some language and some options for us to look at then see if we want to pursue it. At the same time, perhaps we can say we can get these late fees if we had another FTE and have someone who could come in and help with the workload. It would help both. Either way, it would help the General Fund or specifically the Ethics Commission.

The Chair said, "I think that is wise. It's a little late in the legislative year to take this up right now. But, I think it is something we should consider." No action was necessary.

Approval of Minutes

Next was consideration of and discussion on whether to adopt the Minutes [both open and closed sessions] of the Regular Meeting held April 10, 2009 and the special meeting held April 16, 2009. The Chair called for corrections or amendments to the proposed minutes. There were none.

Pettigrew moved acceptance of both the regular and executive session minutes for the meeting held on April 10, 2009. She declined to make the motion for the April 16 special meeting since she was not present. Bingham seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously. The Chairman announced the motion passed and that the minutes and transcript were adopted and would become public record.

Bingham moved acceptance of both the special and executive session minutes for the special meeting held on April 16, 2009. McKinney seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously with Pettigrew abstaining. The Chairman announced the motion passed and that the minutes and transcript were adopted and would become public record.

Ratification of
Expenditures

The Chair then called for consideration of agency expenditures for the period beginning April 1, 2009, through and including April 30, 2009.

Bingham announced, "Mr. Chairman, I move that we ratify the agency expenditures as disclosed in these documents for the period of April 1, 2009 through and including April 30, 2009."

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

Consideration of FY-2010
Budget Request

The next item on the agenda was consideration of the Ethics Commission Fiscal Year 2010 Budget Request.

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

Hughes answered, "We have not had any notice of any agreement on our budget or any proposals. It is still pending before the Legislature".

Administrative Report

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

Pettigrew said, "I have a comment. I really do appreciate the staff making some effort and providing us with information about sending out some email notices where it could be done and to see how well that worked. I think we're on the right track. Thank you, Patti."

Bryant said, "Thank Charles. You are welcome."

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

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

The Chairman called for advice from the General Counsel on the lawfulness of the proposed executive session. Adams stated the items set forth at this place on the agenda were made confidential by law. She further stated, "It is the advice of your General Counsel that disclosure of these items would seriously impair the ability of the Commission to process this claim or conduct a pending investigation or discuss our litigation or proceed in the public interest. It is therefore my advice that the Commission go into executive session for the limited purpose of these listed matters."

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

The Chair declared that, once the observers left the room, the meeting would stand in closed/executive session for the limited purposes of considering the cited matters. After the room was emptied, except for

the Commissioners and staff, a “closed session” sign was posted on the door, and the session began.

Open Session/Action on
Same

When completed, the “closed session” sign was removed, and observers returned to the room. The Chair called for a motion to go back into open session. Pettigrew so moved. McKinney seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously.

Pettigrew said, “Mr. Chairman, I would move that we take the following action on Informations that are listed in the public agenda: as to IU-2009-002, that we continue the matter and direct staff to proceed as directed in executive session; and I [further] move that, with respect to Information IU-2009-003, the Commission continue the case; and that IV-2009-004 be tabled and handled administratively.”

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

New Business

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

Next Meeting

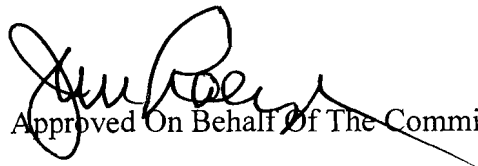
The Chair announced the next meeting was scheduled for June 19, 2009, at 10:00 a.m.

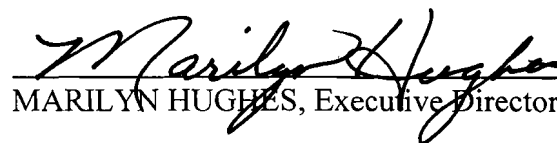
Adjournment

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

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

The Chair then declared the meeting to stand adjourned.


Approved On Behalf of The Commission:


MARILYN HUGHES, Executive Director

JOHN RALEY, Chair
MH/pb