

MINUTES OF REGULAR MEETING
of the
ETHICS COMMISSION
STATE OF OKLAHOMA
held
SEPTEMBER 17, 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 Thursday, September 17, 2009, at 10:00 a.m. Chairman John Raley ["Raley"] presided over the meeting which was held in Room 432A, State Capitol Building, Oklahoma City, Oklahoma.

Introduction of New Member and Swearing in by Chief Justice James E. Edmondson

The first item was introduction of a new member, Karen Long ["Long"], and her swearing in by Chief Justice James E. Edmondson ["Edmondson"].

Determination of Quorum

Roll was then called to determine the existence of a quorum for the transaction of business. Commissioners answering present were: Raley, Long, James Loy ["Loy"], Bob McKinney ["McKinney"], and Jo Pettigrew ["Pettigrew"]. 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 ["Slater"], attorney; Cheryl Purvis and Amy Alden, House staff; Caroline Dennis, Senate staff; Lynn Howell ["Howell"], Common Cause Oklahoma; H.J. Reed ["Reed"], Manager of State Government Affairs, ConocoPhillips Company; Shawn Ashley, ecapitol.net; Representative Mike Reynolds; Robert McCampbell ["McCampbell"], attorney; Cassie Newsome, high school student/visitor; and Marie Price, *Journal Record*.

Resolution Recognizing the Service of Former Commissioner Don Bingham

Pettigrew moved adoption of the following Resolution commending the service of former Commissioner Don Bingham.

WHEREAS, the ETHICS COMMISSION of the STATE OF OKLAHOMA came into being as a constitutional body by passage of a citizen's initiative put to a vote of the people September 18, 1990; and

WHEREAS, **Don Bingham** was appointed August 27, 2004, to serve a five-year term by Speaker of the House Larry E. Adair; and

WHEREAS, **Don Bingham** served the Commission by giving wise legal guidance, approaching issues in a practical, yet compassionate, manner with good sense, good judgment, knowledge of the law, and the ability to analyze and dissect with precision matters coming before the Commission; and

WHEREAS, **Don Bingham** was known for his courageous positions and efforts to make the Constitutional Ethics Rules better, more consistent, more enforceable, easier to follow, and current with the times. He was known for his attempts to eliminate costs and to make electronic filing systems more usable by filers and information disclosed more accessible to the public.

NOW, THEREFORE, in recognition of the significant public service performed by **DON BINGHAM**, we, the members of the ETHICS COMMISSION of the STATE OF OKLAHOMA, join in this resolution to express our sincere appreciation.

McKinney seconded the motion. Roll was called for purposes of the vote, and the motion passed unanimously.

Public Comment on or
Request for Constitutional
Rule Amendments

A public hearing was then held 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. 2009, 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 September 17, 2009 Regular Meeting of the Ethics Commission*, incorporated by reference in the agenda as fully set forth in the document.

Loy

Loy commended Pettigrew for encouraging questions and discussions about amendments before the November and December public hearings. He encouraged commissioners to make comments at any time because they helped him develop his thoughts on the issues.

Proposed Rule Amendment
#7

The Chair submitted what he considered a “fair compromise” to proposed Rule Amendment #7. He said it would allow for a “three good faith efforts pass” upon the part of the candidate to obtain a contributor statement but, at the same time, would require the candidate and his campaign organization to use “due diligence” to obtain the information that would have been disclosed on the statement. Raley further suggested that the same wordage be added to proposed Rule Amendment #9.

McKinney

McKinney asked the Chair whether he was going to remove the words “good faith efforts”.

Proposed Rule
Amendments #7 and #9 —
Raley

The Chair said “good faith efforts” would still be there, but additional words would require due diligence upon the part of the candidate to provide the information that would have been on the contributor statement and would also require the candidate to certify and document that three good faith efforts were made.

Loy

Loy asked if such wording had been submitted.

Raley

The Chair answered that the wording was in proposed Rule Amendment #7, and he suggested that it also be included in proposed Rule Amendment #9.

Loy

Loy asked how due diligence could be proved.

Raley

The Chair suggested that the treasurer or candidate submit a written certification that three efforts had been made along with copies of the written requests to the donor and that due diligence had been exercised to obtain the donor’s name and address and other items required on the contributor statement.

Loy

Loy asked if the Chair meant “within reason” because a “certified letter with return receipt requested” could be required.

McKinney

McKinney said certified letters were expensive and time consuming.

Loy

Loy asked if it should say “within reasonable limits” because there could be no end to what was required.

Hughes

Hughes quoted the new criteria in Rule Section 258:10-1-2(c) effective July 1, that efforts must be in writing, but may be by email or by letter.

Howell on proposed Rule
Amendment #11

Howell supported proposed Rule Amendment #11 lowering the threshold from \$1,000 to \$200 for itemizing expenditures. On behalf of Common Cause, he believed it would also promote additional transparency. He acknowledged problems over the country with candidates raising and spending money and the need to know where the money came from and where it went. Lowering the requirement to \$200, he felt, would give a better idea of where the money was going.

Loy

Loy felt that proposed Rule Amendment #7 would diminish the transparency encouraged by requiring contributor statements. The “due diligence” requirement, he said, would benefit the treasurer in not having to go the extra mile if he had really tried to obtain it — an insignificant factor, he felt, in most cases.

Raley

The Chair explained that the “due diligence” requirement was not to create an undue burden for candidates or to discourage anyone from running for office but to establish a process that allowed transparency and full accountability.

Raley pointed out that an enormous amount of information was available on many donors on the Internet, and with “due diligence,” a treasurer could find the information otherwise required on the contributor statement.

McKinney

McKinney disagreed saying there were many people who, for instance, work in factories and could not be found on the Internet. He also thought there were treasurers who were not computer literate. He did not think the Internet and its ability to find some people should be used as an excuse to find the information required on the contributor statement.

Raley

The Chair suggested that, irrespective of the information on the Internet, there were means available so that a treasurer, exercising due diligence, could come up with the information required by the contributor statement. He asked that the treasurer certify that he or she had done everything that could reasonably be done to obtain that information — whether from the Internet, the phone book, or other source.

Pettigrew

Pettigrew agreed with Howell that the language requiring “due diligence” should be tied down. She suggested at least three written contacts were sufficient.

Raley

The Chair wanted to go further by requiring the treasurer to submit copies of the three written contacts and to certify that three written instruments had actually been mailed by the U.S. postal service together with a certification by the treasurer that due diligence had been exercised to obtain the information otherwise available on the contributor statement.

Proposed Rule Amendment
#8 — Pettigrew

Pettigrew went on record as opposing a full scale revision of the requirements for personal financial disclosure. She proposed a shorter version to address some of the reasons for the “F” rating but did not want to exchange the two-page document for a 15- or 16-page document to fix the deficiencies. She did not want to discourage candidates from running for office because of the difficulties of filling out required forms.

Hughes

Hughes pointed out that the state was graded based on financial disclosure requirements of legislators. She also noted the different tiers of reporting in the proposal.

McKinney

McKinney thought the Commission should take some of the good ideas from Louisiana, Texas, Alaska, Washington and adapt them into a good, simple financial disclosure requirement. He wanted easy fixes to the current document.

Hughes

Hughes informed Commissioners of two telephone calls from Indian tribes concerned about the definition of “gaming interests” for people who serve on boards and commissions. She advised they were afraid the definition would disqualify their citizens from serving. The purpose, as she explained, was disclosure.

Howell

Howell suggested that candidates be moved to the lowest level of disclosure. Then, once elected, he thought they should be moved to a higher level. He hesitated requiring too much disclosure from first-time candidates.

Raley

The Chair agreed that candidates should not be “overwhelmed” with paper but warned against losing sight of the primary mission of the Commission — accountability, transparency and full disclosure.

Consideration and
Discussion on Whether to
Adopt Resolution on
Enforcing Existing
Requirements of Rules'
Sections 257:10-1-2(c) and
257:10-1-14(a)(20)

Consideration of and discussion was then held on whether to adopt the following resolution on enforcing the existing requirements of Rules' Sections 257:10-1-2(c) and 257:10-1-14(a)(20):

WHEREAS, the Ethics Commission amended Rules' Section 257:10-1-2(c) of the Rules of the Ethics Commission, 74 O.S. Supp. 2009, Ch. 62, App. Effective July 1, 2009; and

WHEREAS, the intent of the amendment was to hold harmless a treasurer who makes three written, good faith efforts to obtain a contributor statement within 30 days of accepting a contribution; and

WHEREAS, further amendments to Section 257:10-1-2(c) and Section 10-1-14(a)(20) are being considered that would clarify the intent of the amendment;

NOW, THEREFORE, the Commission hereby adopts this Resolution and expresses its intent not to enforce the contributor statement requirement of Sections 257:10-1-2(c) and 257:10-1-14(a)(20) until such time as the Commission promulgates effective clarifying amendments to these sections.

Pettigrew

Pettigrew stated that she was not trying to change policy with the Resolution but to clarify what members thought they passed last January concerning contributor statements. She pointed to the January meeting minutes when the author [sponsor], Commissioner Bingham, said, "Whereas now, it's just an absolute violation if you never obtain that card and turn it into the Commission." Further, when Commissioner Raley said, "If we do not have a paper certificate with a signature on it..." Bingham again said, "And, whether we get a contributor card [statement] or not". Again, Bingham referred to "these contributor statements". She concluded that it was clear that many commissioners thought the amendment addressed obtaining the contributor statements and the fact that sometimes it was too hard to get them.

Loy

Loy asked for clarification that they were talking about the difference between the information on the contributor statement and the contributor statement.

Pettigrew

Pettigrew answered they were.

Hughes Hughes confirmed the Resolution addressed only obtaining the contributor statement and not changing the information normally obtained from the statement and required to be disclosed.

Loy Loy said it was his impression in January that they were voting on the contributor statement. After three good faith efforts, if the statement did not come in, they would send no one to jail.

Pettigrew Pettigrew explained that, with October reports coming up, Commissioners needed to make it very clear with the Resolution exactly what was done.

Raley The Chair said, if the Resolution were passed, would they not be changing a policy adopted in January which became a rule in July, and the change would remain in effect until July 2010 even if a rule were adopted in January 2010 that was different from the resolution.

Pettigrew Pettigrew agreed with the time line but disagreed that the Resolution changed what Commissioners thought was adopted. She claimed it clarified what was passed in January 2009.

Raley The Chair clarified that what was being proposed would be in effect until July 2010. Pettigrew agreed.

Change in Resolution —
Hughes Hughes announced that she and Adams agreed there was a deficiency in the Resolution. She asked that — after Section 257:10-1-20(a)(20) in the third line of the NOW THEREFORE paragraph reading, “the Commission hereby adopts this Resolution and expresses its intent not to enforce the contributor statement requirement of Sections 257:10-1-2(c) and 257:10-1-14(a)(20)...” — the words “**if three good faith efforts to obtain a statement are made and to obtain and provide the required contributor information**” be inserted before “... until such time as the Commission promulgates effective clarifying amendments to these sections.” Adams noted the added wording conformed to the previous discussion. Pettigrew agreed. Discussion followed.

McKinney McKinney asked how long committees had to get the information.

Hughes Hughes answered there was no deadline, but one could be added.

Pettigrew Pettigrew asked, if no contributor statement was received, was the name, address, occupation and signature still required.

Hughes

Hughes answered that just the occupation and employer, not the signature, were required under the disclosure document. Not having the contributor statement would not waive the requirement to disclose that information.

Pettigrew

Pettigrew asked for clarification as follows: If a contributor gave \$75 to Senator Smith and signed a contributor statement but did not include all the information, what would be the criteria for the treasurer to make three good faith efforts to get the information and/or the card?

Hughes

Hughes said the Rule adopted in January, effective July 1, already established what would be a “good faith effort”. She quoted:

The requests shall not include material on any other subject or any additional or any additional solicitation, except that it may include language solely thanking the contributor for the contribution. The requests must clearly ask for the missing information and must include an accurate statement of this rule regarding the collection and reporting of contribution identifications. All requests must include the statement in a clear and conspicuous manner.

Hughes further requested the citation in the last paragraph in the Resolution be amended from 257:10-1-20(a) to 257:10-1-14(a). She thanked Amy Alden for pointing out the error.

Reed

Reed said he and Slater were the proponents of the rule introduced in November 2007 in Tulsa. He noted the rule then did not pass but was carried forward and passed on a three to one vote in the 2009 rule amendments. He asked staff whether the three good faith efforts was included in the Resolution’s intent not to enforce?

Hughes

Hughes answered the reading was from what was passed effective July 1. The Resolution — because the rule that actually passed referred to missing information rather than the contributor statement itself — would not enforce getting the contributor statement if the good faith efforts were made as specified in the promulgated rule.

Reed

Reed asked if it would require a paper copy be filed with the Commission.

Hughes

Hughes answered staff would not advocate that. Reed agreed.

Raley

The Chair argued against adopting the Resolution. He claimed that there was confusion over the change in wording; that the Commission was reinterpreting a rule adopted in January while considering another change the coming January; that the current rule casts a veil over transparency by giving an out to a treasurer who makes three attempts and is unable to come up with the contributor statement; that there was no misunderstanding over the rule adopted even though members spoke of the contributor statement and information thereon; that the contributor statement is a valuable prosecutorial tool and not having it would hamper investigative and prosecutorial efforts; and that the proposed clarification would cast an even darker veil on the Commission's efforts for transparency and accountability.

Raley further thought the Resolution was a potential Constitutional violation and invited Robert McCampbell to comment. He said, since constitutionally, the Legislature can pass judgement on amendments to rules, and the Resolution was a substantial change in what was adopted and what was now proposed allowing at least three written good faith efforts after acceptance of the contribution to obtain the contributor statement, then the Legislature, constitutionally, was entitled to pass on that change.

Loy

Loy said he was persuaded somewhat by the Chairman's argument that in passing an amendment, before it can become a law or an accepted rule, it had to be approved by the Legislature. He wondered if a rule approved by the Legislature and then changed by Resolution would pass constitutional muster.

Pettigrew

Pettigrew asked the Chair what he expected candidates or officeholders to do on their reports in October?

Raley

The Chair responded they should follow the rule in place.

Pettigrew

Pettigrew asked how he accounted for the fact that the sponsor and the Commissioner who seconded the motion thought the amendment referred to obtaining contributor statements and were not told until June after the session was over that it did not.

Raley

The Chair pointed to the clear language of the amendment that was voted on and adopted in January. The Resolution, he said, called for a totally different set of circumstances. In one instance, getting the contributor statement, in the other, getting an incomplete statement or

missing information. The proponents of the original rule, he thought, had been given every opportunity to enlighten members on its exact meaning.

McC Campbell

Following a 15 minute break, McC Campbell spoke at the invitation of the Chair. He disagreed that the proposed Resolution would be a change in the law. He said it would be anticipated that, after accepting the contribution, the logical way to make the three efforts to obtain the missing information would be to ask the person to get the contributor statement turned in. He felt that, for the Commission now to pass a Resolution clarifying that was the intent at the time was wholly appropriate and not in violation of any principles.

Although he approved of a detailed study to the rule, McC Campbell was concerned about what candidates should do until July. He saw the Resolution as a responsible way for the Commission to publish its reading of the rule.

Raley

The Chair disagreed, stating that he failed to see how anybody could say the Resolution was not a change. Rather, he thought it would say to the world the Commission did not mean what was promulgated in January. He felt the credibility of the Commission was at stake. He further did not see any reason to rush the Resolution when a compromise amendment could be adopted in three months.

Pettigrew

Pettigrew stated that what was passed in January was confusing or ambiguous since it was interpreted in June in a way that had not been considered before. Clarification was needed, she thought, so that candidates and officeholders would know the amendment was about getting the contributor statement, not the wording on it. She did not believe it was a rule change; therefore, she moved adoption of the Resolution. McKinney seconded the motion.

Amendment to Resolution
— Hughes

Hughes asked if the Resolution included the amendments previously discussed.

Adoption of Resolution

Pettigrew agreed and moved to adopt it as amended. McKinney seconded the motion as amended. Roll was called for purposes of the vote, and the motion passed three to two with Raley and Loy voting no.

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

The Chair announced he had asked Commissioner McKinney to lead the discussion on whether to amend the Commission's archiving schedule to 20, rather than 42, years for disclosure documents and to report on the Business Imaging Systems proposal.

McKinney

McKinney reported there was no change from what the Commission was charged by the Department of Libraries and what MidCon would charge. The only exception, he said, would be that if someone wanted to access the information with MidCon, they would be responsible for paying the charges.

Right now, McKinney thought no change was needed concerning archiving current information. Because the Commission would be in existence for 20 years in 2011, he suggested that staff look at the funding in the future for electronically imaging the information.

Raley

The Chair agreed that electronically preserving records was preferable but suggested other items were prioritized ahead of that for additional funding. No action was taken.

McKinney

McKinney left the meeting at this point.

Approval of Minutes

Pettigrew moved adoption of both the regular and executive session minutes for the meeting held August 14, 2009. Loy seconded the motion. Roll was called for purposes of the vote. The motion passed by a vote of three. Long abstained.

Ratification of Expenditures

Loy moved to ratify the agency expenditures as disclosed for the period of August 1, 2009 through and including August 31, 2009. Pettigrew seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously.

Bryant reported on the 5% budget cut and effects. She stated that, so far, the agency had been cut for August and September a total of \$5,176. She further advised that the Employee Benefits Council had recently published insurance rates starting in January that were lower than what agencies had been told to budget. This, she reported, resulted in a savings of approximately \$3,000, leaving the agency only \$2,172 short for the fiscal year. With the \$807 from FY-09 that was cut in June, the shortfall was reduced to \$1,365.

Consideration of FY-2011 Budget Request

The next item on the agenda was consideration of the Ethics Commission Fiscal Year 2011 Budget Request.

Pettigrew

Pettigrew moved that, due to the need to collect late filing fees, an Administrative Assistant be moved to the second priority after an Investigator.

Raley The Chair asked staff what the most pressing needs were.

Loy Loy pointed out that the Commission was criticized in budget hearings for its priorities but agreed that another assistant to collect money was something that should be discussed with staff.

Hughes Hughes said staff considered all the positions important. With an auditor/investigator, another attorney would be needed. Since all were tied together, she had no preference for the order. She advised an administrative assistant was a logical step since assessing late fees was required by statute.

Raley The Chair said it was important to continue to seek what was needed from the Legislature annually; however, he supported the change in priorities.

Pettigrew Pettigrew said, since the Commission was being observed concerning its efforts to collect late fees, changing the priorities would address the need. She again moved that priority budget request #5 be moved up to #2 and that the remaining priorities be reordered. Long seconded the motion. Roll was called for purposes of the vote, and the motion passed unanimously.

Administrative Report Adams handed out a letter from President David Boren of the University of Oklahoma expressing his concern about proposed Rule Amendment #8. She reported the letter would be made part of the rulemaking record and would be discussed at the October meeting. Both Raley and Hughes said they would write a response acknowledging receipt of the comment.

Litigation Report On, and Recognition of Office of the Attorney General Services In, *Hardgrave V. Ethics Commission* Adams announced that the plaintiff in *Hardgrave v. Ethics Commission* voluntarily dismissed his lawsuit against the Ethics Commission and its co-defendant, Rex Duncan. No reasons were given. A motion to dismiss had been pending by Commission counsel, Greg Metcalfe, Assistant Attorney General. Before the court could rule on it, she advised, plaintiff's attorney Jim Frasier announced to the court that he would dismiss the matter.

As General Counsel, Adams reported she wrote a letter to the Attorney General praising the services of Assistant Attorney General Greg Metcalfe and Senior Assistant Attorney General Neal Leader. She also passed out a letter from Chairman Raley on behalf of commissioners

thanking the Attorney General commending the two lawyers and thanking them for their services. By common consent, the letter was approved.

Press Release

Also, by common consent, the Commission approved a proposed press release concerning the dismissal of the lawsuit.

Notice of Hearing on
Request for Ethics
Interpretation EI-2009-002

The following notice of a hearing on Request for Ethics Interpretation EI-2009-002 was issued:

Notice is hereby given that the Ethics Commission will hold the hearing to consider Request for Ethics Interpretation Ei-2009-002 at its October 16, 2009 regular meeting. The Commission will accept both oral and written comments prior to or at the hearing. Staff comments and/or drafts of the ethics interpretation will be available on the agency's website at www.ethics.ok.gov and , in addition, will be emailed with its agenda to all those on the emailing list seven (7) days before the meeting.

The following question was asked:

Must board members of local conservation districts file personal financial disclosure with the Ethics Commission pursuant to the Rules? If so, what type?

The Chair announced that a hearing on the request would be held at the regular meeting in October.

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 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 or proceedings in the public interest. She therefore advised that the Commission go into closed session for the limited purpose of these listed matters.

Action followed, as Loy moved the Commission go into closed session. Pettigrew 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
Confidential Matters Set
Forth on the Agenda

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

Loy moved that IV-2009-004 be tabled, that IV-2009-005 be tabled, that no action be taken on IU-2009-006, and that IV-2009-008 be continued. Pettigrew seconded the motion. Roll was called for purposes of the vote, and the motion passed unanimously.

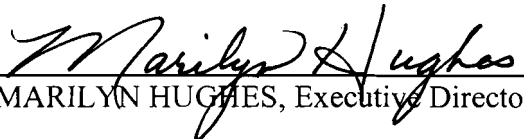
Long moved, in Information IV-2009-009, that the Commission find an adequate basis and sufficient evidence for the belief that a violation of the Rules may have occurred; that respondent committed the violation; that the jurisdiction in which the violation occurred was ascertained to be Oklahoma County, Oklahoma and /or other counties in Oklahoma; that an investigation of the information was warranted; and that the Commission open an investigation in the matter, direct staff to proceed as discussed in executive session, and authorize the issuance of subpoenas. Loy seconded the motion. Roll was called for purposes of the vote, and the motion passed unanimously.

New Business

There was no new business.

Adjournment

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


Marilyn Hughes
MARILYN HUGHES, Executive Director

Approved on Behalf of the Commission:


JOHN RALEY, Chair
MH/pb