

## **VICE CHAIR'S PROPOSED AMENDMENTS TO STAFF'S REVIEW OF THE PSEA**

### **General rationale**

That the PSEA in its current form is outdated, inconsistent and incongruous with other law seems to be without dispute. The initial, and maybe most fundamental question, facing the Legislature is the role of the Ethics Commission (EC). At one end of the scale is to mirror on the local level the EC role at the state level. The polar opposite is to remove the EC altogether. Neither is advisable.

From a practical perspective, the former would be impossible without a tremendous infusion of additional funds and probably politically impossible to achieve as the 21<sup>st</sup> century version of a cross of gold - an unfunded mandate. Philosophically, it runs counter to the Oklahoma tradition of shared governing. The result of the latter would be very inconsistent enforcement, strongly influenced by local politics and personalities. In addition, the cost would be significant as local officials turn to District Attorneys, municipal attorneys and school board attorneys for advice, and courts are called upon to resolve conflicting interpretations.

Adoption of a middle ground - a blend of EC and local administration and enforcement - is likely more politically acceptable and will result in more consistent enforcement. Although it will require additional funding, the necessary amount will pale in comparison to the expense to the public caused when local bodies seek opinions of their legal counsel and disputes are resolved in protracted court proceedings.

### **Recommendations**

**Delete Title 51 Oklahoma Statutes, Section 307, paragraphs H-M, inclusive.** (Staff Report p. 6)

I incorporate by reference the staff comments found on pages 4-6, and add the following:

In addition to the unnecessary burden on the EC, as set out in the staff report, requiring a "mini-trial" prior to referring a matter to the District Attorney is incongruous with settled criminal procedure. A misdemeanor may be prosecuted by the District Attorney without a preliminary hearing or presentment by a grand jury. That which is required of the EC is the functional equivalent of an executive branch grand jury, a burden and expense unknown to misdemeanor prosecutions.

**Amend Title 51 Oklahoma Statutes, Section 303, and any other applicable provision of the PSEA, to create a regime of shared administration of the act in the following respects:**

- **filings required of candidates, candidate committees and other persons/committees will be with the appropriate clerk - county, municipal or school board**

- the appropriate clerk will be mandated to report to the EC any and all late filings
- the EC will assess and collect late filing fees in the same manner arising from the county, municipal and school board levels as at the state level
- complaints of violations of the PSEA will be made to the EC in the same manner as complaints of violations at the state level
- EC will be granted the same discretion to issue Ethics Interpretations as at the state level
- enforcement of the criminal provisions of the act and ouster proceedings will be left completely to the local District Attorney or Attorney General.

I incorporate by reference the staff bullet comments found on pages 7 and 8 and add the following:

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- the result will be uniform standards and uniform interpretation for both state and local officials
- politics and personalities will be removed from the enforcement of standards at the local level.

**Create a regime of civil penalties for violations of the PSEA that (a) mirrors those in place for state officers and (b) amends Title 22 Oklahoma Statutes, Section 1181, to include a willful violation as a cause for removal from office.**

Creating only criminal penalties for violations of the PSEA fails to recognize two realities. First, most violations result from lack of knowledge or understanding, rather than a malicious or willful intent to violate a law that is *malum prohibitum*. Second, District Attorneys are very reticent to become involved in local political squabbles, be they at the county, municipal or school board level. The cause of and reaction to violations of the Open Meetings Act provide excellent analogous circumstances.

For those violations that are willful, including the possibility of ouster has two effects. First, it adds an additional tool to the kit bag of the District Attorney and Attorney General, resulting in greater flexibility of response. Second, ouster is a much stronger prophylaxis than a misdemeanor charge.

**Amend Title 51 Oklahoma Statutes, Section 307 to delete paragraphs D and E.**

I incorporate by reference the staff comments found on pages 10 and 11 concerning gag orders and moratoria.

**Amend the act to permit sending notice of tardy filings by either regular post or electronic means.**

I incorporate by reference the staff comments found on page 13.

**Amend the act to delete the wording of reporting forms, and vest that authority in**

**the EC.**

If the wording of forms is statutory, amendments must also be statutory. This is a cumbersome, time-consuming, expensive and unnecessary process. In addition, it creates the potential for (a) inconsistent requirements for state and local officials and (b) the possibility of confusion when a local office holder runs for state office, or vice-versa.

**Amend the act to create a consistent monetary trigger for the requirement to register and file reports.**

I incorporate by reference the staff comments found on pages 15 and 16.