

MINUTES OF REGULAR MEETING
of the
ETHICS COMMISSION
STATE OF OKLAHOMA
held
APRIL 9, 2010

Call to Order

Upon notice with agenda being properly posted at the principal office at least twenty-four (24) hours previously and notice being filed at least ten (10) days in advance with the Office of the Secretary of State, a regular meeting of the Ethics Commission of the State of Oklahoma ["Commission"] was called to order on Friday, April 9, 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: Rick Denny, Slater & Denny; Cheryl Purvis and Arnella Karges, House Staff; H.J. Reed, lobbyist, ConocoPhillips; Michael McNutt, *The Oklahoman*; Lynn Howell ["Howell"], Common Cause Oklahoma; Paul Pettigrew, Pettigrew's husband; Jaymee Angel, Long's daughter; and Representative Ken Miller ["Miller"].

Chairwoman Pettigrew introduced her husband, Paul Pettigrew, and Commissioner Long's daughter, Jaymee Angel.

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 April 9, 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.

Lynn Howell

Howell submitted, on behalf of Common Cause Oklahoma ["CCO"], two proposed rule amendments. The need for the amendments, he said, depended on whether the 2010 amendments passed by the Commission become effective. Copies were made available.

The first amendment dealt with prohibitions and exceptions to corporate and labor organization expenditures. It read, "A corporation or labor organization shall not make an electioneering communication pertaining to any candidate for District Judge, Associate District Judge or Corporation Commissioner if the corporation or labor organization is a party to a case being adjudicated by that candidate or an opponent of that candidate, or was a party to such a case within the previous four (4) years". Howell explained CCO did not want District Judges acting under the threat that if they rule against a union or corporation that was a party to a case before them, that corporation or union could campaign against them. That scenario, he thought, went to the very integrity of the judicial system.

Corporation Commissioners, he said, also hear cases and adjudicate disputes. Parties to those cases could actively defeat or support an opponent of a sitting commissioner who voted against them using unlimited funds.

Howell felt that this amendment should be an exception to the *Citizens United* holding. He thought Oklahoma should be the first state to enact such an exception even though a challenge could be a big expense and hassle.

The second amendment dealt with contributor statements. He suggested adding it to the end of the current rule, as amended in 2010, as

follows: "Therefore, the treasurer must return the contribution within thirty (30) days".

Howell explained that he knew the Commission was concerned about removing burden of penalties on campaign treasurers for failure to get the required contributor statements. However, he thought the information on the contributor statement was key to openness in government – where money comes from, he said, is useful for everyone, including the voters, the press and Common Cause. Without the name, address, occupation and employer, the whole process is rendered worthless. The amendment would require the money be returned if the treasurer could not get the information.

Anonymous contributions, Howell said, are not permitted. The public has the right to know who is funding campaigns.

The Chair asked staff to draft these rule amendments.

There was no further discussion on rule amendments. No action was taken.

Consideration and discussion on whether to review definitions of "associated" and "substantial financial interest"

The next item of business was consideration of and discussion on whether to review the definitions of "associated:" and "substantial financial interest" to determine if the amounts and percentages are "fair" and "reasonable" in light of today's economy.

Hughes reported on a letter from Paula Hearn, a former director of the Department of Central Services and now with DHS. Hearn raised concerns about the amounts and percentages in the two definitions. She suggested that employees would be caught unaware who had stock in large corporations. She suggested the amounts were outdated and the dollar threshold should be reexamined by the Commission in determining whether conflicts of interest existed.

The Chair asked Rick Denny of Slater & Denny and Howell to assist by bringing their ideas to the next meeting. We don't want this rule to be so unduly hard or obtuse that it results in a "gotcha" situation. She suggested they could be made more reasonable and compatible with today's economy.

Approval of Minutes

The next item of business was approval of the minutes. McKinney moved adoption, as revised, of both the regular session and executive session minutes for the meeting of March 12, 2010. Long

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

Ratification of
Expenditures

The next item of business was ratification of expenditures. McKinney moved to ratify agency expenditures, as disclosed, for the period of March 1 through and including March 31, 2010. Loy commented that percentage-wise, the Commission continued to be spending money within the budget. He commended staff and seconded the motion. Roll was called for purposes of the vote. The motion passed unanimously.

FY-2011 Budget Request

The next item of business was the FY-2011 Budget Request. The Chair announced someone might be coming to make comments on our budget. Hughes stated there was nothing to report. The agency's appropriation bills were still shell bills.

Administrative Report

The next item of business was the administrative report. Hughes said there were no changes.

She reported that the Commission was required by law to send materials to county election boards. She asked the Commission to consider a request to change the Statutes to allow providing those materials online. She reported it would cost \$2,600 to print them this year. Normally, she reported, 15 sets are sent to each county, except that 25 are sent to Oklahoma and Tulsa counties.

In response to whether it was too late to ask for the change this year, the Chair suggested it could be added to a bill germane to the Commission and that action be taken that day. Hughes pointed out that some people at the local levels do not have computers; however, they have access to libraries.

Adams said she would provide the language needed to amend the statute to present to the Legislature later in the meeting. The Chair advised she would return to this item after the executive session.

In response to a question about the time line to correct the problems from the audit, Hughes said assessments would be mailed in April. She advised they would meet with the Auditor once everything was accomplished.

Bryant said she had been training Charles Knight to do her financial duties. Now, she explained, that would have to wait for his

replacement. The Chair said those things were understandable and predictable. She commended the staff on proceeding with the assessments and making preparations for hearings.

Loy suggested that the staff draft a letter of commendation and thanks from the Commission to Charles Knight. Raley second Loy's motion. Long suggested the letter be drafted as a consensus of the Commission since there was no action item on the agenda. Adams agreed. All commissioners agreed.

FY-2011 Budget Request

At this time, the Chair returned to the agenda item on the FY-2011 Budget Request and introduced Representative Ken Miller.

Representative Ken Miller

Miller, who is Chair of the House Appropriations and Budget Committee, thanked the Commission for their good work. He felt there was a better rapport between the Commission and the Legislature at the present time as a result of the work of the Commission and communication between the two. He stated there was no need for animosity between the Legislature and the Commission because Legislators who work hard to comply with the Rules want those who do not comply to be held accountable. He thought the Commission's work was hard and thankless.

Miller also addressed the budget. He thought the budget would be grim through 2011 and 2012 as revenues began to turn around. He did not state whether budget cuts would be across-the-board or surgical. He thought the Legislature recognized that 2010 would be a significant challenge with our budget and workload. He could not remember when so many statewide and legislative offices would turn over as they would in 2010. He understood this would mean increased work with the number of campaign finance reports the Commission would be dealing with.

Miller also acknowledged there would be an increased number of complaints. He reported there was no plan for across-the-board cuts. And, he thought there would be recognition for those with the direst needs to meet their missions. He included the Ethics Commission in that group.

Miller thought it might be a good time to look at some retention of fees for the Commission. Such a move would provide motivation to collect the fees, and while the amount of fees you collect doesn't make much of a difference to General Revenue ["GR"], it could make a

difference to the Commission. He also suggested finding money that would not be built into the base, but would help through the budget crisis.

Miller also addressed the name change bill. He said Commissioner Pettigrew had met with Representative Gus Blackwell ["Blackwell"]. He believed the motivation for the bill was a perception that when a report was filed late, it appeared there had been an ethical breach in conduct rather than simple procrastination.

Miller also thought the Commission could be misused and abused by individuals and office holders who sought political retribution by trying to get someone under a cloud of suspicion during an election - knowing full well that the ethics complaint that they filed would not ultimately come to fruition and result in a penalty. But, during the investigation, he said it could be used against someone if they were under a cloud of suspicion for ethical breaches. The name change was motivated, in part, because of perception of ethical breaches during an election.

He advised the bill would not go forward with the Commission being wholeheartedly against it. They appreciated the feedback, he said, which was strong. It was received and heard, and that issue would not go forward.

The Chair thanked Miller for his presence, for listening to the Commission's position on the name change, for acknowledging 2010 would be tough year because of the elections, and for looking at the possibility that some of the late fees would come back to the Commission.

Miller stated he was representing his views - not the House position - but he had a little bit of say over the budget. He acknowledged the Legislature had allowed fee retention by other agencies, and that the amount of money would not hurt GR nearly as much as it would help the Commission.

Miller also acknowledged there were some things that have occurred in the Commission that the Legislature has not liked, and others that have occurred in the Legislature that the Commission has not liked. But, he said, at some point both had to get past it and go forward working together.

Loy explained that investigations were private and confidential, but the Commission recognized ulterior motives. He expressed appreciation that Miller explained that motive behind the name change.

Pending Legislation Report

The next item of business was the pending legislation report. Hughes reported that Senate Bill 1753, Senator Leftwich and Representative Terrill's bill on making the birth dates of state employees confidential, passed out of committee on April 7 with the enacting clause stricken. She also advised that Senate Bill 1849, by Senator Sykes and Representative Terrill on the Administrative Procedures Act, also passed out of committee April 8 with the enacting clause stricken. It would do away with emergency rules and make you have to submit rule amendments by the beginning of a 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. Loy 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

Long moved that IU-2009-003 be continued; that IV-2009-009 be continued; that CV-2010-002 be continued; and that CV-2010-003 be continued. McKinney seconded the motion. Roll was called for the vote. The motion passed unanimously.

Administrative Report

The Chair returned to the agenda item for taking action on the Administrative Report. She noted commissioners had just received information from the staff on how to present this language to the Legislature asking them to consider the ability to retain \$2,600 by providing materials online rather than providing them to county election boards, municipalities and school boards.

Discussion was held. Long moved that the Commission request an amendment to Title 51, Section 305(A)(3) as follows: "...make available from its website forms upon which information shall be provided as required by the Political Subdivisions Ethics Act and copies of the Political Subdivisions Ethics Act to the persons required to submit forms for all candidates, committees, officials, and employees required to submit such forms". Hughes was asked to submit the request to the appointing authorities. McKinney seconded the motion. Roll was call for purposes of the vote, and the motion passed unanimously.

The Chair suggested that commissioners and staff create a list of places in the Rules or Statutes where electronic notices and filings could replace paper notifications or filings.

Discussion was held on whether the Administrative Report could be sent electronically and the confidentiality of some attachments, including the Executive Session minutes and the Informations.

The Chair questioned the letter from Representative Joe Dorman ["Dorman"] to Commissioner Loy pertaining to two Rules submitted in February. Hughes reported it appeared Dorman was taking Loy's suggestion to submit rule amendments addressing his concerns. These included that the Speaker's Ball was not the only event that fit under the exception – such as the Governor's Ball and the NAACP Ball. But, she said, there was an exception for anything to a charity which he was also concerned about which was already included in the Rules.

Karges said she spoke with Representative Dorman over the break and he mentioned the same things Hughes had reported. His big concern, however, was that the Speaker's Ball might not always operate the way it currently did. Each Speaker or Speaker-elect could decide what to do

with the event. There had, she said, been past years under former Speakers when it was essentially an event to raise money for a particular political party.

Dorman, she said, regretted being unable to attend the meeting, but said he was committed to not filing anything to disapprove the Rules mentioning the Speaker's Ball. His request was that the Commission look at it for future amendments.

The Commission committed to looking at it further and encouraged Dorman to make suggestions for language changes. Karges said members were invited to many events very similar to the Speaker's Ball.

The Chair commented on late fee assessment letters that would be mailed in April and announced the agency had a hearing officer on board. She encouraged the hearing officer and commissioners not to base decisions on fees on the prospect of the proceeds coming back to the agency.

Hughes reported she had not seen any harsh actions by the hearing officer in the past. He was, in her opinion, fairly lenient. It was very rare for him not to reduce a fee.

New Business

There was no new business. The next meeting was scheduled for Friday, May 14, 2010.

Adjournment

Long moved to adjourn. McKinney 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