

MINUTES OF PUBLIC HEARING AND REGULAR MEETING
OF THE ETHICS COMMISSION
STATE OF OKLAHOMA
HELD MAY 8, 2015

Call to Order

Upon notice with agenda being properly posted at the Commission office at least twenty-four (24) hours prior to the commencement of the meeting and notice being filed at least 48 hours in advance with the Office of the Secretary of State, a public hearing and regular meeting of the Ethics Commission of the State of Oklahoma ["Commission"] was called to order on Friday, May 8, 2015 at 10:04 a.m. Chair Karen Long ["Long"] opened the meeting, which was held in Room 432A, 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: John Hawkins ["Hawkins"], Thomas Walker ["Walker"], Jo Pettigrew ["Pettigrew"], and Long. A quorum of members was declared.

Staff & Visitors

Commission staff members present at all or part of the meeting were Lee Slater ["Slater"], Ashley Kemp ["Kemp"], Geoffrey Long ["Long"], and Roberta Hale, ["Hale"].

Observing all or part of the meeting: Glenn Coffee, Attorney; Denise Davick, Attorney; Maria Maule, Governor's office; Samantha Davidson, Senate staff; Sean Ashley, ECapitol News; Cliff Branan, former Senator, Senator Stephanie Bice; Senator David Holt; Senator Kay Floyd, and Representative Gary Banz.

Introductions and Announcements

Commissioner Stocker is not present at today's meeting. Her brother passed away earlier this week.

Director Slater mentioned that there are several distinguished guests in attendance today for the Public Hearing.

Consideration of Possible
Amendments to Rule 3 of the
Constitutional Ethics Rules

Discussion of Rule 3 by the Executive Director:

Director Slater mentioned the list of people who are required to file the personal financial disclosure statements. All elected state executive, legislative and judicial officers; all state judicial officers subject to retention; all candidates for state elective executive, legislative and judicial offices; all chief administrative officers and first assistant administrative officers

of each state agency; all state officers who make policy decisions; all state officers and employees who are engaged in purchasing decisions and all members of boards, commissions, authorities and similar public bodies of state agencies. Those who are required to file disclosure statements are required to file online and the information submitted appears on a new form.

A few months ago, the Commission voted to study the financial disclosure requirements. The Commission intends to look throughout the 2015 year to reform the current rules. One of the concerns is that far too many people are filing financial disclosure reports. Last year, 7,000+ filers were required to file forms. Under the new rule, the purchasing requirement was raised from \$2,500 to \$50,000; this change has resulted in a substantial reduction in the number of people who are required to file. For this year, nearly 5,000 filers will file the form. We are currently in the midst of the first electronic filing period.

Commissioner Hawkins asked OEC staff to look at financial disclosure rules in other states. The difference between a state receiving an "A" rating and a "C" rating is the answer to the question regarding the audit of the financial disclosure forms.

The other states that we reviewed request a lot more information than is currently required by Oklahoma financial disclosure rules such as creditor and debtor information. Historically, this Commission has found such creditor and debtor information to be overly intrusive. We have copies of the forms from the handful of the states that we reviewed for the Commissioners to review.

The Commission plans on scheduling a number of public hearings throughout the year prior to the regular monthly meetings. So far, we have had discussion with legislators and we asked the legislators to appear today for the public hearing.

Comments and Questions by Commissioners:

Commissioner Hawkins thanked the staff for gathering the requested information. In addition, Hawkins requested the staff to gather information from other states as to what specific information is being audited on the forms and how many forms are being audited in the states that receive the "A" rating.

Public Comment:

Senator David Holt:

Senator Holt thanked the Commission for the opportunity to give comment today. It is his opinion that 7,000 people do not need to file the financial disclosure forms. Further, it is not intuitive to the public that they need to go to the Ethics Commission to find such forms. He does believe that state elected officials need to continue to file the financial disclosure forms such as the Governor, legislators, statewide elected officials and district judges.

He mentioned that he believes the forms should be held at the specific agency rather than the Ethics Commission. As to the state employees, those people are employed by the agency and they might not have obvious conflicts. If the forms were housed with the agency itself, they might be able to review the forms for potential conflicts.

Additionally, there are laws that cover certain types of conflicts. In contrast, our legislature is a citizen legislature, so many of us work in private employment. The bosses for the legislators are people of the State of Oklahoma. The people can't do their jobs of overseeing the legislators without the use of the financial disclosure form. Legislators are more prone to have conflicts due to outside employment. It is entirely appropriate for legislators to be filing the financial disclosure form. There is an expectation by the public for legislators to file such forms.

The Commission is headed in the right direction with some kind of disclosure form. The Commission needs to consider the core question that speaks to the questions presented in the form itself. The form should include constructive questions that answer the core question in mind. Holt completed the form this week and he thinks the form is vague. He doesn't believe the form is serving its purpose right now.

Commissioner Walker questioned Senator Holt. Walker requested if Senator Holt had any ideas as to members of regulatory bodies and the potential of conflicts based on such membership. Walker knows that there are some built-in conflicts. How does the Commission handle Agency X and business relationships of an appointee that might impact on Agency X?

Senator Holt responded that, if the Commission wants for all such conflicts to be addressed and handled at the agency level, he believes the disclosure forms should be held at the agency level. For instance, Senator Holt mentioned If he wanted to know about conflicts at Agency X, he would not know to go to the Ethics Commission to request that form for someone employed or appointed to Agency X. I do not believe that the general public knows that the Ethics Commission is maintaining the forms in their office. We want to make it easier and transparent for the public to engage with the Agency itself.

Commissioner Hawkins questioned Senator Holt as to what form would be in use by all the agencies. Who would be the party to develop the form?

Senator Holt mentioned that it would make sense that the Ethics Commission be the agency to develop the form so there is continuity. He doesn't think it is helpful for the Ethics Commission to be the repository for that information. He still believes the form should be kept at the agency level.

Senator Kay Floyd:

Senator Floyd thanked the Commission for the opportunity to speak today. She believes that legislators should be required to file the financial disclosure forms. She is in agreement with Senator Holt that 7,000 filers are far too many filers.

Her first issue is that the form needs to reflect the questions that the Commission needs to ask to get the information that is required to identify a conflict. She believes the form is vague and doesn't address the questions to identify any conflicts without being overly intrusive. This financial disclosure process should not discourage people from running for office because they don't want to make that kind of disclosure.

Her second issue is what the Commission does with the information. How will the information be used if the Commission determines there is a conflict? What kind of action can the Commission take if a conflict is addressed? Can the Commission sanction the filer?

Commissioner Walker questioned Senator Floyd about governing bodies. Walker mentioned that there are certain governing bodies with statutory conflicts. Should there be

some disclosure by the appointee as it relates to the potential conflict with the agency?

Senator Floyd mentioned that there is a balance that you need to strike with the boards and agencies. You do want to have people with experience to serve on the board. Some of the boards have people who have served in that particular profession. If you limit the people who serve on the boards who understand the profession; you are working against the system of good government. The Commission needs to work with a certain set of questions as to the disclosure. The Commission doesn't want to discourage good people from serving the State.

Walker asked Senator Floyd if she would want the people with direct conflicts to serve on those boards. Senator Floyd mentioned that it would depend on the nature of the conflict. Senator Floyd mentioned that Commission will need to take each situation and address it on a case by case basis.

Commissioner Pettigrew thanked Senator Floyd for mentioning what the Commission does with the information. Pettigrew mentioned that the Commission needs to work a little harder to determine the proper amount of disclosure. We have a small staff of 5 people. The Commission needs enough staff to be an agency that also has a process of reviewing the forms.

Director Slater asked a question of Senator Floyd regarding her constitutional duty to disqualify from voting on matters that she believes she has a conflict. Senator Floyd mentioned that she does have the duty.

Chair Long spoke about the disclosure of school board officials. When a person is elected to office, there are built-in provisions that are designed to determine if a conflict is present. If a person has a conflict of interest, they may be found ineligible to serve on a board and they are subject to disqualification from being able to vote on a matter.

The other thing that gets missed in this process is that we need a universal financial disclosure form that is designed in a way that it relates to each agency itself and was developed in such a way to address any conflicts within the agency. The only conflict that the current form is pointed towards is a financial conflict. Chair Long mentioned that the form right

now might not ever lead us to the point of lodging a penalty because the information is so nebulous. We will never be able to determine that there is conflict which would warrant us to spend time auditing the form. Will we ultimately pinpoint what we need to accomplish with the use of the form? Does each question and answer identify a conflict of interest?

Cliff Branan:

He is a former Senator that served three terms. He is present today to discuss the financial disclosure forms as to how it related to his twelve years of service in the Oklahoma Senate. Our legislature is a citizen legislature and it is a time-consuming job. If a legislator wants to do the job correctly, he or she needs to constantly learn and participate in multiple meetings. The financial disclosure form is a very time-consuming form and he finds that the form is very vague. He provided full disclosure on every question and the form is very intrusive. The obligation to complete the form could limit someone from running for public office. As a result of the form, a filer could be exposing all their assets to the public.

He believes that everyone needs to run for office. Qualified successful people with interest need to serve as our state elected officials. He believes the Commission needs to focus on the big stuff. There is a procedure on the Senate floor for any legislator who has a conflict may disqualify himself from voting on that matter.

Commissioner Walker asked Senator Branan as to his profession. Branan is a commercial realtor. He doesn't believe that any conflict existed as a result of his profession. In addition, He doesn't believe that he should be required to disclose his stock holdings.

He thanked the Commission for the opportunity to speak.

Glenn Coffee:

Mr. Coffee thanked the Commission for the opportunity to provide public comment. He is present at today's meeting as outside counsel for the President Pro Tem of the Senate. The Pro Tem would argue that it is not in the best interest of the Commission to continue with the current disclosure form. There is a constitutional obligation of each legislator to abstain from voting if they have a conflict. He would also argue that he is not aware of any effort to identify

corruption that relied on such disclosure form.

If the form was doing its job, then the form would have been in play in past corruption matters. What purpose does the form serve other than to provide information that has a material interest and provide background on the elected official. It certainly doesn't accomplish the intent of the form to identify any conflicts of interest. If a person has conflict, it is unlikely that the conflict would be disclosed on the form. Elected officials take an oath to conduct their duties. There are plenty of investigative tools available to the Commission to identify such conflicts. The current form should not be continued in its present form.

Representative Gary Banz:

The people that spoke before him have already addressed most of his concerns. There is a constitutional privilege taken on a regular basis in the House. It appears to him that this conflict of necessity needs to be identified prior to the time that the person is hired by the agency or prior to someone being appointed to the board. If a conflict were to be identified prior to taking office, then the conflict should be addressed to allow them to serve and opt out of a vote that poses a conflict. To address the conflict after they begin service is probably counter-productive.

He would ask the Commission to address the question of what's the problem. How willing is the Commission to articulate the problem and the need for the information that is being gathered. I would request that the Commission be narrow in scope and direct to gather the requested information.

Commissioner Walker asked a question of Rep. Banz. So a person that is being considered for an appointment or employment should be required to reveal any potential conflicts at that time?

Rep. Banz believes that if a conflict is revealed after the person has been appointed or employed, the process comes across as counter-productive. The conflict needs to be addressed prior to the time of the appointment or employment.

Senator Stephanie Bice:

Senator Bice is a freshman legislator and this is her first time to be present before the Ethics Commission. Senator Bice mentioned she had concerns if the financial disclosure information provided was going to be available in public disclosure. She does believe that the financial disclosure process should provide transparency. How does the Commission use the information it gathers via the financial disclosure form?

She has some concerns. Senator Bice is partner in a small business in Oklahoma City. If she has to disclose her clients, it may lead to her clients not wanting to do business with her as a legislator. It would also allow my competition to know my clients. She wants to be transparent and open as to the financial disclosure process. Ultimately, she wants to know who will become the holder of the information.

Maria Maule:

She is the Deputy General Counsel at the Governor's office. She thanked the Commission for the opportunity to provide the perspective of the Governor's office. The Director of Appointments is highly engaged in vetting people for certain appointments, questions are asked regarding membership in organizations and employment information.

She is concerned about the support that is available to new appointees. There are agency liaisons that assist some people in their compliance with financial disclosure forms. Is someone available to let them know what is required on the form, any potential red flags, etc.?

Additionally, she has concerns on the securities question. She believes that there is confusion for some filers as to if they need to disclosure retirement accounts and/or passively held security accounts. She doesn't see any benefit to disclosing securities on the form. How does that information assist the Commission with potential conflicts of interest?

Commissioner Hawkins asked Ms. Maule if she or anyone at the Governor's office has any directives on who should be filing the disclosure forms. The forms are public disclosure. The Commission is just collecting the forms.

Ms. Maule said that her concern is not the scope but what is

the actual quality of the instruction. She knows the form is intended to reveal any potential conflicts. For most filers, there is no one that is assisting them with completion of the form. As a result, the form needs to be more explicit. She is aware that as to regulatory boards, there are people that will always have a baseline conflict of interest. The language used in the form needs to be common language so that all filers will interpret the form in the clearest way.

Commissioner Hawkins further questioned Ms. Maule. He asked if Ms. Maule had reviewed the form. She has reviewed the form. Hawkins is concerned about the interpretation of the people who view the form. He has some other concerns as whether the form is gathering the correct information to reveal any conflict. Do we need more clarification as to the questions on the form?

Ms. Maule states that there is no explicit instruction on the securities question. What types of accounts are to be disclosed? The question is confusing to the filer. She also believes that the last couple of questions don't reveal any instructions. The information isn't clear enough. She has interaction with the filers that fall under her as the agency liaison. Sometimes we get questions; there is a lot of confusion as to when the reports are filed and as to the information that is being requested on the forms.

Commissioner Pettigrew asked a question as to when the forms should be filed. She is hearing that it may be too late to reveal a potential conflict after they person has been appointed or employed. How would the Governor's office staff feel about someone completing the form prior to being appointed?

Ms. Maule feels that it could be helpful if the form is completed prior to the appointment. You get more answers when talking with someone which solicits the back and forth communication. The Director of Appointments walks through a series of questions which solicit responses to determine if any conflict is present. The potential appointees complete an application in the process. Honestly, most people don't think that a certain fact in a person's life might reveal a potential conflict.

Slater asked if the Governor's office spends a great deal of time vetting potential appointees prior to making an appointment.

Ms. Maule mentioned that she works with the Director of Appointments. There may be an individual that didn't have a conflict at the time of the appointment, but during the term a conflict arose. My concern is that some people are getting great guidance in completing the form and others are not receiving any guidance. The form itself needs to be clear enough for all filers to provide the correct information.

Chair Long mentioned in years ago, insurers went through a process when they wrote a certain policy to make the language basic enough for different people to understand the language. The point is well made that we do need to make the form clear so we can gather the correct information from all the filers.

Chair Long also addressed some of her concerns. There is a concern that some people will take advantage of the ability to access such financial information. While some filers over-disclose information; there are other filers that under-disclose. Our current system tolerates both of those approaches and the problem is an issue with how those filers interpreted the language on the form. Ultimately, the form could be used against the person that over-discloses information.

The Commission needs to ensure that the form is understandable in a way that a person could meet their requirements to complete the form with all the requested information. The Commission has an obligation to everyone not to make one person feel they need to over-disclose information. No one should complete the form that is overly invasive. We need to genuinely, clearly, and easily determine financial conflicts of interest by the use of the form. In addition, we need to ensure that every question on the form address the core question.

Once the Commission has identified who is required to file the form and how broad the form should be with regard to questions and answers, we need to ensure the intent of the form serves its purpose of revealing any conflicts of interest. The Commission can't do a "one size fits all" form. Is it better for each agency to develop it's own form to address any specific conflicts?

There are myriad statutory provisions that help to determine statutory conflicts of interest. The Commission will continue to review the process and have further discussion regarding the financial disclosure process.

Ms. Maule had one further comment. There are leanly staffed entities that are engaged in this process. Maybe there needs to be a minimum amount of questions involved by all the agencies to determine if a conflict is present prior to an appointment.

Senator David Holt:

He wanted to add to the discussion of Mr. Coffee. The forms have never been a factor in any investigation for corruption. True corruption will never be disclosed on any form. No person is going to go to the form to find out the primary employment information for any legislator. Such information is provided in the legislator bios online.

Comments and Questions by Commissioners and Staff:

Chair Long thanked everyone for their participation at today's public hearing. Thanks to everyone for allowing the Commissioners to ask questions.

The Commission will continue to schedule public hearings to hear comment as to the current financial disclosure process.

Consideration, Discussion and Possible Action on Minutes for Regular Meeting and Executive Session held on April 10, 2015.

Pettigrew moved to approve minutes for the regular meeting and executive session held on April 10, 2015.

Hawkins seconded. Roll was called and the vote was as follows: Pettigrew – yes, Hawkins – Yes, Walker - yes, Long – yes. **Motion carried.**

Discussion of Agency Expenditures for the month of April, 2015.

Commissioner Pettigrew asked a question on the monthly appropriations. She requested clarification as to what was included other than salaries.

Deputy Director Kemp mentioned that the bulk of the monthly appropriation was related to the Quest software bill. They don't bill until they complete a project, so we have paid quite a few Quest invoices in April.

Executive Director's Report.

Slater said Senate Bills 347, relating to the Commission's revolving fund, and 348, relating to declassification of Commission personnel, both were signed into law by the Governor on April 21, 2015. He expressed his appreciation to Governor Fallin, Senator Jolley and Representative Billy for their sponsorship of the legislation.

He said SB 438, relating to municipal campaigns, had been

amended in the House of Representatives to restore the title and was now awaiting final action in the Senate.

Slater said that Ashley Kemp, Pam Williams and Roberta Hale had conducted the first "how-to" training programs for the campaign finance reporting software on April 16.

He said continuing education programs were held for the Black Legislative Caucus on April 15, for the school district board members and administrators at Tulsa Tech on April 17, for two groups of state officers and employees in Oklahoma City on April 22 and for Grand River Dam Authority board members and executives on April 30.

Slater said that there were about 30 lobbyists who missed the May 5 deadline for filing expenditure reports, but that number was down to 11 today. He said the first quarterly reports were filed by political action committees and political party committees, and that by the April 30 deadline all but about 30 of the 212 PACs and 61 party committees had failed to timely file. That number was down to nine today.

Slater said there were 4,744 state officers and employees listed for mandatory financial disclosure---down about 3,000 from the previous year. He said that 2,054 had filed by today, about 43 percent.

Slater noted that all the filings were electronic for financial disclosure statements for the first time.

Slater praised the staff, including Deputy Director Kemp, General Counsel Geoff Long, Pam Williams and Roberta Hale for their patience and competence in handling extremely heavy telephone and e-mail traffic during the preceding two weeks during filing periods for lobbyists, campaign finance and financial disclosure.

Deputy Director Kemp mentioned that all systems are live in the Guardian software. We are working on special committee reporting. In addition, we are working on identifying certain functionality and how we can make the functionality more effective. Our warning system is not live at this time. In the next build, the warning system will go live and it will assist the filer community. The search and report function capabilities will be more robust. Statistical information will be part of the next build as well.

Commissioner Pettigrew asked for clarification as to the special function committee. Kemp responded that special function committees are committees registered for a specific purpose such as an inauguration committee, legal defense fund committee, speaker's ball committee or a litigation fund committee for an officeholder. Reports are due within 180 days of the event.

General Counsel's Report

General Counsel Long discussed a Florida case: Williams-Yulee v. The Florida Bar, regarding a judicial candidate's free speech challenge as to a judicial candidate not being allowed to solicit contributions.

Consideration, Discussion and Proposed Action on Closed/Executive Session

Statement by Attorney is listed as Agenda Item 10 (a).

Chair Long suggested that Commissioners hold over the items for Executive Session until the May meeting. She makes the request to allow Commissioner Stocker be in attendance for Executive Session.

No Executive session was held at today's meeting.

New Business

Commissioner Walker requested that Complaint 14-010 be placed on the agenda for discussion at May's executive session. Chair Long so noted.

Adjournment

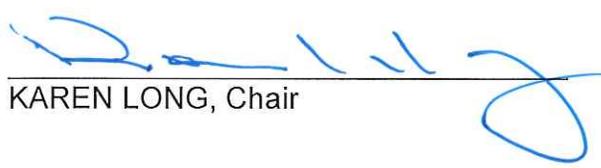
Hawkins moved to adjourn. Pettigrew seconded. Roll was called and the vote was as follows: Hawkins – yes, Pettigrew – yes, Walker - yes, Long – yes. **Motion carried.**

Meeting ended at 11:37 a.m.



LEE SLATER, Executive Director

Approved on Behalf of the Commission:



KAREN LONG, Chair