

MINUTES OF PUBLIC HEARING AND REGULAR MEETING
OF THE ETHICS COMMISSION
STATE OF OKLAHOMA
HELD AUGUST 14, 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, August 14, 2015, at 10:00 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"], Cathy Stocker ["Stocker"], 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"], Stephanie Black ["Black"], and Roberta Hale ["Hale"].

Observing all or part of the meeting: Denise Davick, Attorney; Caroline Dennis, Senate staff; Matt Glanville, Senate staff; Shawn Ashley, ECapitol News; Sean Murphy, Associated Press; Dale Denwalt, Journal Record; Barbara Hoberock, Tulsa World; Randy Ellis, The Oklahoman; Joey Senat, Oklahoma State University; and Mark Thomas, Oklahoma Press Association.

Introductions and Announcements

Director Slater mentioned that there are several distinguished visitors in attendance who will speak during public comment. Slater introduced Mark Thomas, Executive Vice-President of the Oklahoma Press Association, who was instrumental in inviting people to speak at today's public comment.

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

Discussion of Rule 3 by the Executive Director:

Slater mentioned that the Commission will continue to have public hearings regarding financial disclosure during upcoming monthly meetings. He believes it is time that the Commission starts to provide direction to the staff to move forward with the revision of the financial disclosure rules. Topics should include different standards for different types of individuals that file disclosures, what should the disclosure form list, the frequency of disclosure, the availability of the disclosures and whether the form can be used as an educational tool.

Comments and Questions by Commissioners:

No comments or questions.

Public Comment:

Joey Senat, Associate Professor
Oklahoma State University School of Media and Strategic
Communications.

He also writes a Freedom of Information Act (FOIA) Oklahoma blog. He appreciates the opportunity to speak today. He believes he was invited to speak today due to being quoted in a newspaper article regarding city officials and school board officials who file the financial disclosure reports. These officials are upset with the requirement to file disclosures. Particularly, the school board officials are complaining that they are not compensated, so they should be considered volunteers. Therefore, they should not be required to file the disclosure form. Senat told the reporter that it was utter nonsense.

He is aware that the Commission has been told that it is particularly intrusive for state board members to file the disclosure form. It is nonsense to treat members of very powerful boards and commissions that essentially run state government same as people who have been volunteering at the local food bank. These officials have taken on an important role and responsibility in the operation of our state government. The Open Meeting Act and Open Records Act apply to these filers. They should be required to file financial disclosure reports. They have the power to spend large sums of public funds, administer public property, make public policy and transact the business of the public.

Senat feels that talking about them as volunteers implies that they have a reasonable right of privacy to shield certain information from the public. The legal right of privacy has distinguished between the people that serve in public service and people who chose to remain in the private sector. He believes that it would include people that are serving on public state commissions and boards. A member of a state commission questioned at a previous Ethics Commission meeting "Why should the Commission care about what stocks he holds?"

Senat mentioned a story where a state commission that regulated trade schools in the state had a member that actually owned stock in a for-profit trade school. It was relevant information as to his service on the commission. It is important for the public to be able to know certain investments and financial ties that members of these boards and commissions may have within an industry that they may regulate.

Senat would ask the Commission to find a model for transparency regarding these issues. It is a complicated process. A state integrity study that took into consideration data from all 50 states, shows that Oklahoma ranks 38th in the nation with a grade of D in the area of integrity. Oklahoma did receive a grade of D+ for the management of the civil service system. One of the major complaints listed in the study was that the financial disclosure reports are too vague in places and don't provide enough financial information.

The Commission should work hard to provide better reports. The Commission should not cut off reporting requirements for the people that help to run state government. He thanked the Commission for the opportunity to speak.

Comments and questions by Commissioners:

Chair Long asked Mr. Senat if he was familiar with the current disclosure form. Mr. Senat mentioned that he is a current state employee at OSU; he does file a disclosure form for OSU. The form is different from the form that the Ethics Commission has on its website. Chair Long asked Mr. Senat as to his opinion on the questions that are listed on the ethics form.

Mr. Senat believes that the form he completes isn't as

comprehensive as the ethics form. He has to disclose if he makes money from the sale of products to students. He disclosed that he has written a textbook and that the textbook is used in his class. It is a \$35 book. The information about anyone working in state government needs to be available.

The ethics form he found on the website seems acceptable to him. He would encourage that the Commission ask questions that are narrower in scope to request specific information. He posted it on the FOIA Facebook page. He asked for comments. He received one complaint from another OSU employee. She was completing the form due to her service on a bid proposal review committee. This employee feels that the procedures in certain places were overly complicated. She understands the requirement and obligation for someone in a higher capacity to complete the form.

Chair Long asked Senat if one form would be acceptable to cover the range of state employees, board members, city officials and county officials. Should there be a different form for different filers? There needs to be a form that will truly allow for meaningful transparency.

Senat believes that there is a need for different forms for different levels. Some employees are asked to complete the form that has nothing to do with their actual jobs. He has looked at forms from other states. One form doesn't quite get it for information from different groups of people. A city official may have to complete a different form than the form a state commission member will complete.

Commissioner Hawkins asked Senat about his research of other states' forms. Senat said that he could not respond to the research question. Senat was researching if any states actually received an "A" rating regarding the state integrity study. He could not find where any state received an "A" rating. He would request that the Commission look into a current model in place for financial disclosure and move forward in that fashion. It is a lot of work and Senat is available to help. He doesn't want the Commission to buy into the argument that board members and commission members are volunteers. These people don't run for election; they are appointed officials. They don't file campaign disclosure reports. They should have to file a financial disclosure report that informs the public about their income, certain investments and any financial ties. They need to assure the public that they are doing their jobs honestly. The

job of the financial disclosure process is to build public confidence.

Chair Long thanked Senat for his time and comments.

Barbara Hoberock, Tulsa World and
Randy Ellis, The Oklahoman

They are speaking as individuals and not as to a particular organization. They would request more disclosure and not less disclosure. The financial reporting requirement is very important. Hoberock concurs with Mr. Senat's comments.

Hoberock handed out copies of the Application for Gubernatorial Appointment to a Board or Commission for the Commission to review. Mr. Ellis handed out a copy of an article entitled "Lawmakers Found Doing Business with State Despite Laws" dated October 27, 2002.

Ellis mentioned that it is important for the public to know this information. He said that the Commission does good work with the financial disclosure process. The article will show that a few years ago, some state legislators had conflicts of interest. Often, we receive word from the public on possible conflicts of interest. The media uses the information provided to see if any one serving on a board or commission may have some conflicts.

Hoberock mentioned that the media understands there are limitations as to staff resources. She believes that the \$50,000 purchasing threshold could be increased and reduce some of the filing requirements. Maybe also consider possible changes to lower-level policy makers. She doesn't look at every single report.

Ellis mentioned that the board members and commission members have a lot of power. He believes that the public should know if a board or commission member has stock in a private company that is regulated by the same board or commission. It could be that the process will disclose if some of the filers have a possible conflict of interest. He mentioned that the forms are not as detailed as he would like to see. He would request to know the specific company that the filer has interest or owns stock in.

Hoberock mentioned she doesn't believe that there is a shortage of people that want to serve in public service. If the

person doesn't want to disclose the information, then they don't need to be in public service. There are plenty of people who are willing to serve and disclose information.

Ellis mentioned that he appreciates the service of the Commission.

Comments and questions by Commissioners:

Chair Long asked the question regarding the application for gubernatorial appointment. She thanked Hoberock for providing the application. What is the timeline for completing this form? Would someone file the Ethics Commission form in addition to the gubernatorial form? Is it an unnecessary duplication to use both forms?

Hoberock mentioned that the gubernatorial form is a bit more invasive. She doesn't believe that a filer completing both forms is particularly burdensome. The members of boards and commissions have important responsibility.

Chair Long asked if it would be advantageous to have one form rather than two separate forms.

Hoberock mentioned that there might be a form that the Speaker uses for his appointments. She just doesn't know.

Chair Long mentioned that the volunteer issue is a new issue for her. If people are volunteering for service on a board or commission, then we should treat all equal. Should there be a different requirement for someone who is running for elected office as opposed to someone who is being appointed to a position. Should there be an application for each division?

Hoberock doesn't believe that there should be different forms for different filers. She wants everyone to complete the same form. She does sympathize with some of the lower-level policy makers that complete the form. She wants more disclosure rather than less disclosure.

Chair Long asked Hoberock as to her opinion of the form. Is this an attempt at transparency; is one able to look at the forms and find useful information? Hoberock mentioned that on a case-by-case basis some filers are more detailed and other filers are vaguer in their responses. Ellis mentioned that some of the forms have holes in them due to the limited

responses. He believes that the forms should be available online so that the public and the media can see the forms. Currently, the forms are completed online but the media can't access the forms online. We need to request the forms through an open records request in the ethics office. He believes that sometimes it is a deliberate effort to be transparent but then the forms are not available online.

Chair Long thanked them for their comments.

Mark Thomas, Oklahoma Press Association

Mr. Thomas mentioned that everyone depends on the Ethics Commission to get in front of the problems before the conflicts of interest. He does believe that the Commission is doing the right thing. He said his group reviewed all the different types of filers. It is important to have policy makers and employees involved in the purchasing process to file the forms. Policy makers drive the purchasing process.

He understands the need that the Commission might want to use different forms. He believes that one form should be used for all the filers across the board. It will be a difficult scenario to use different forms. The Commission needs to keep the form simple but require the appropriate information to see if a conflict exists. He reviewed the form. He found it difficult to eliminate any types of filers. Conflicts may exist at every level. There could be statewide effort after May 15th of every year to review the forms. He does believe that everyone should be able to access the information. The Commission needs to review the accessibility of the forms. He does think the Commission is moving in the right direction.

He wants honest people completing the forms and serving in public service. The Commission is staying out in front of the process and requiring the disclosure form.

No further public comment.

Comments and questions by Commissioners and staff:

Commissioner Walker will introduce a comprehensive change to Rule 3 at the September meeting.

Chair Long mentioned that she has had a request to enter into executive session earlier this meeting. She asked the

Commissioners if there was a desire to enter into executive session at this time.

Walker mentioned that he wants to be fresh for the executive session. It could be an extensive session and it may take some time to review all the information.

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

Hawkins moved to go into Closed/Executive session. Walker seconded. Roll was called and the vote was as follows: Hawkins – yes, Walker – yes, Stocker – yes, Pettigrew – yes, Long – yes.

Motion carried to go into Executive/Closed session at 10:38 a.m.

Executive session was held in the Conference Room located within the Ethics Commission office in the Capitol basement, Rm. B-5.

Possible Action to Return to Open Session

Walker moved to reconvene in open session at 11:43 a.m. Hawkins seconded. Roll was called and the vote was as follows: Walker– yes, Hawkins – yes, Stocker – yes, Pettigrew – yes, Long – yes.

Motion carried.

14-010

No action will be taken today. Chair Long stated that Commissioner Pettigrew has recused herself from any participation and deliberations on this matter. When this matter was about to be discussed in executive session, Commissioner Pettigrew left the room and was not present for any portion of the discussion.

C-15-09:

Walker made the following motion: Madam Chair, I move the Commission to approve the proposed settlement agreement to resolve Case No. C-15-09. Hawkins seconded.

Roll was called and the vote was as follows: Walker – yes, Hawkins – yes, Stocker – yes, Pettigrew – yes, Long – yes.

Motion carried. Settlement agreement is approved.

C-15-05:

Pettigrew made the following motion: Madam Chair, I move the Commission to dismiss Complaint C-15-05. Stocker seconded.

Roll was called and the vote was as follows: Pettigrew – yes, Stocker – yes, Hawkins – yes, Walker – no, Long – yes.

Motion carried. Complaint C-15-05 is dismissed.

C-15-10:

Walker made the following motion: Madam Chair, I move the Commission to dismiss Complaint C-15-10. Stocker seconded.

Roll was called and the vote was as follows: Walker – yes, Stocker – yes, Hawkins – yes, Pettigrew – yes, Long – yes.

Motion carried. Complaint C-15-10 is dismissed.

Return to Item #4 on the Agenda.

Consideration, Discussion and Possible Action on Minutes for Public Hearing and Regular Meeting and Executive Session held on July 10, 2015

Walker moved to approve minutes as presented for the public hearing, regular meeting and executive session held on July 10, 2015.

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

Motion carried.

Discussion of Agency Expenditures for the month of July, 2015

No discussion was held.

Executive Director's Report

Slater said that recent communications from Trait Thompson, State Capitol Project Manager for the Office of Management and Enterprise Services, indicated that a "single move strategy" had been adopted, meaning that the Commission offices would be moved only once during renovation of the Capitol. Slater said that space in the northwest portion of the Capitol basement would be renovated to accommodate both the Ethics Commission and the State Election Board. He said the move would not occur until sometime after the 2016 elections.

Slater said the first special committee reports, including one for the gubernatorial inaugural committee, had been filed. He said that a journalist had indicated to him that a six-month reporting requirement was too long and should be shortened to three months so that the report was filed during the legislative session.

Slater said he and other staff members had met informally with representatives of the lobbyist community to discuss issues with the new Rules.

He also said that the staff had accepted an invitation to discuss campaign finance and financial disclosure obligations of county election boards during a series of regional workshops to be conducted by the State Election Board in September and October.

Deputy Director Kemp updated the Commission on the software project. She mentioned that there is a new testing environment with new functionality that will show some statistics that will be available to the public; some very concise top-ten lists on some items that we thought would be interesting to the public. We hope to have that information available to demonstrate to the Commission at the September meeting.

Slater reported that late filing fees had been assessed against six legislative lobbyists or liaisons for \$200 each and against 18 legislative lobbyists or liaisons for \$100 each following the July reporting deadline. He said that 15 lobbyists or liaisons had paid \$1,900 in late filing fees and that seven others had requested administrative hearings, which are scheduled for Thursday, September 3. He said that today is the last date on which to request an administrative hearing, and two individuals had not responded to their late fee assessment notice.

Slater reminded the Commission of the Council on Governmental Ethics Laws 37th annual conference in Boston December 6-9, 2015.

General Counsel's Report

General Counsel Long discussed the case of *Republican Party of Louisiana v. FEC*. He stated this case challenges certain limitations to soft money rules in federal law. He stated he does not anticipate this will have any impact on Oklahoma rules, but he will continue to monitor the case.

General Counsel Long then provided a brief overview of Rule 1.7 relating to the procedures for considering Advisory Opinion Requests.

Requests for Advisory Opinions

AOR-15-03

Mr. Fetgatter contacted General Counsel Long a month or so ago. He has some concerns regarding his candidacy. He is a candidate for a state office in the same district where he is a radio show host on a morning variety show. Sometimes, political issues will be discussed on the show. He wants to maintain compliance with the ethics rules. It became apparent that this matter would be ideal for an advisory opinion to be addressed by the Commission.

If the Commission wishes to address this issue, we can publish the hearing on this matter prior to the October meeting and place it on the agenda for the October meeting. The commission can address the matter after receiving public comment.

Walker questioned General Counsel Long as to the procedure. The matter must be authorized to allow staff to prepare a proposed advisory opinion pursuant to the request and to give notice of a hearing prior to placement on the agenda. General Counsel Long said that the staff would notify the public of the proposed advisory opinion and also place it on the agenda for the October meeting.

Walker made the following motion: Madam Chair, I move the Commission authorize the staff to draft an advisory opinion pursuant to request AOR-15-03 and, at the appropriate time, give notice of a hearing and place the item on the agenda. Pettigrew seconded.

Roll was called and the vote was as follows: Walker – yes, Pettigrew – yes, Hawkins – yes, Stocker – yes, Long – yes.

Motion carried.

AOR-15-02

The Commission will not offer an Advisory Opinion on ANY matters that are involved in pending litigation.

Hawkins made a motion to deny the request due to the

pending litigation. Stocker seconded.

Walker asked General Counsel Long if it was wise to dismiss the matter or should the matter be held in abeyance pending the litigation. General Counsel Long advised that it would be better to proceed with denying the request at this time and, then the advisory opinion can be requested again depending on the outcome of the litigation.

Roll was called and the vote was as follows: Hawkins – yes, Stocker – yes, Walker – yes, Pettigrew – yes, Long – yes.

Motion carried. AOR-15-02 request is denied.

Proposed Reexamination of
Commission Rules 2.6 and 2.7 and
Suspension of Enforcement of those
Rules

Democratic Party of Oklahoma v. Long, et al., Case No. CIV15-870 in the Western District of Oklahoma.

Walker made the following Motion: Madame Chair, I move the Commission to adopt the following Resolution: In light of the recent United States Supreme Court decisions in *Reed v. Town of Gilbert* and *Walker v. Texas Div. Sons of Confederate Veterans*, both decided in June of this year, that the Commission reexamine Commission Rules 2.6 and 2.7 and suspend enforcement of those Rules until they are amended to ensure their constitutionality and that the Commission notify the public of its suspension of the enforcement of those rules.

Stocker seconded.

Roll was called and the vote was as follows: Walker – yes, Stocker – yes, Hawkins – yes, Pettigrew – yes, Long – yes.

Motion carried.

New Business

No new business.

Adjournment

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

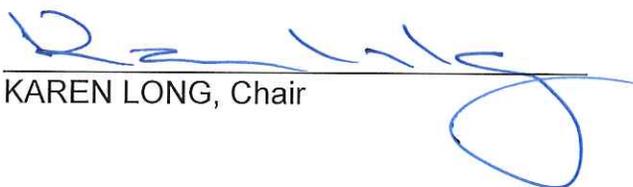
Motion carried.

Meeting ended at 12:13 p.m.



LEE SLATER, Executive Director

Approved on Behalf of the Commission:



KAREN LONG, Chair