

MINUTES OF PUBLIC HEARING AND REGULAR MEETING
OF THE ETHICS COMMISSION
STATE OF OKLAHOMA
HELD SEPTEMBER 11, 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, September 11, 2015, at 10:02 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"], and Roberta Hale ["Hale"].

Observing all or part of the meeting: Caroline Dennis, Senate staff; Matt Glanville, Senate staff; Shawn Ashley, ECapitol News; Barbara Hoberock, Tulsa World; Sean Murphy, Associated Press; Mark Thomas, Oklahoma Press Association; Jim Huff, Oklahoma citizen; Jaime Hammer, University of Oklahoma; Tom Geist, Human Resources - Department of Human Services; Joe Wertz, State Impact Oklahoma; Alex Cameron, News 9; and Kay Bickham, Freedom of Information Oklahoma.

Introductions and Announcements

Director Slater mentioned that several distinguished members of the media are present today. President Robert Henry is appearing today; Slater will introduce him when he arrives.

Consideration of Possible
Amendments to Rule 3 of the
Constitutional Ethics Rules including
Amendment 2016-01

Chair Long mentioned that the Commission would now move to Agenda Item #4 to allow President Henry to arrive.

Explanation of Amendment 2016-1 by Commissioner Walker:

As Commissioner Walker approached his analysis of Rule 3, he arrived at the conclusion that it is a disclosure of connections whereby a public official can use his or her position in the government to make money from decisions made by the government, either for that person or that person's family. Ideally, it could also be that other parties influence those decisions. It may be a bridge too far but he wanted to cover those connections.

In crafting the language, he relied on a few factors. He relied on his personal experience having been subject to disclosure rules for at least 10 years prior to the Ethics Commission being created. He also relied on the public hearing comment. He notes that the public speakers tended to focus on the form rather than the rule. He believes that a rule should be crafted prior to crafting the form. He wants to begin to revise the rule and find satisfaction with the rule prior to crafting the form. The form should implement the rule.

Walker doesn't believe that he is a volunteer. Even volunteers can use their position of influence to move governmental decisions that permit them or their family members to gain from that governmental decision. He disregarded the idea of self-policing. He mentioned that the Governor has a current form she uses for disclosure. The next Governor may not be as diligent. Plus, there is no guarantee that whatever disclosure is required will be enforced. Same idea speaks to the Legislature. The disclosure is subject to the leadership that is in place.

Finally, some people may note that some of the categories of required reporters have been eliminated. A closer examination may reveal that the rule was crafted to focus on the result and the definition of a reporter. Regardless of how a public person is classified or defined, if he or she is in a position to gain, or if their family members can gain, then he or she must report. In other words, the result not the definition guided him in crafting the rule.

He mentioned that he believed that the press was present for today's meeting to hear his explanation of his proposed

amendment.

Remarks by the Honorable Robert Henry, President, Oklahoma City University, on the approaching 25th anniversary of approval by the people of Oklahoma of State Question 627 creating the Oklahoma Ethics Commission.

Chair Long mentioned that the 25th anniversary of the creation of the Ethics Commission is upon us.

Director Slater stated that twenty-five years ago on September 18, 1990, the people of Oklahoma approved State Question 627 which created the Oklahoma Ethics Commission. The question was placed on the ballot through an initiative petition. It passed with a 63.8 approval rating. It is not often when there is an opportunity to hear from someone that helped to write a part of the Oklahoma Constitution.

Slater read President Henry's biography for the Commission and the people in attendance. Henry was instrumental in writing the language that became Article 29 of the Oklahoma Constitution. President Henry is highly qualified to discuss the creation of the Oklahoma Ethics Commission.

President Robert Henry, Oklahoma City University

He brought with him the final report of the Constitutional Revision Study Commission of the year when he was Chairman. It was a remarkable effort to fix some items that needed to be fixed. One of the most important items is the Ethics Commission. He asked Commissioners and staff members to sign the book.

He is not a fan of democracy. He is a fan of democracy with rights. There should be rights that a temporary majority cannot trump. He has always been a little suspicious about the initiative and referendum in Oklahoma. He believes that there are legislators to deal with the issues. The people are supposed to elect the best people for office and let the legislators solve the problems. He referenced *The Federalist #10* by James Madison.

He referenced the book *Oklahoma Politics: A History* by James Ralph Scales and Danney Goble. The book reveals that Oklahoma has a Southern political culture that has struggled with ethics. At the time, the legislators felt that the state of ethics in Oklahoma should be addressed, and the group felt it was essential to have a constitutionally mandated agency - an agency that had constitutional status that could not be changed by the Legislature. It would have to go again to a vote of people. It's not something that everyone wants to

do; it was a troubling time.

The idea was taken to the people as a part of a series of constitutional reforms. The measure was overwhelmingly approved. It was interesting because people on both sides of the issues were so worried about the Ethics Commission. Some people were in support and some people were in opposition. At the time, great care was taken with the appointments. Henry appointed Father Michael Roethler to the Ethics Commission as his appointee to the Commission.

From the very start, there were people that thought the Ethics Commission was going to go too far or possibly not far enough. He believes the record of the Ethics Commission is remarkable. The easy problems have all been solved; the hard problems still remain. Transparency is spoken about all the time. At the time that these rules were implemented, there was no transparency.

The Commission has done remarkable work. It has shined the light of the sun on the political system in Oklahoma. It has completely changed the system. The Commission has made a good choice in hiring Lee Slater. This Commission's work will always be difficult, but the work needs to continue.

He spoke briefly about two of his political heroes, Sandra Day O'Connor and Henry Bellmon. Justice O'Connor has no overarching philosophy; he admired her work as a Judge and Justice. Henry Bellmon was the first Republican governor elected in the South since Reconstruction. Bellmon decided to work on the Equalization Board, property values, and the Constitution.

Henry believes it is gratifying to know that the idea for the Ethics Commission has survived twenty-five years. The system has to be kept open, and the Commission has to let people know what is going on with the Commission's work.

Henry mentioned that today is a day of great tragedy in American history. We must never forget the tough times. Today, it is nice to celebrate the history of the Ethics Commission.

Comments and Questions of Commissioners:

Commissioner Walker mentioned that the vote was taken on his birthday.

Vice-Chair Pettigrew asked Henry whether it was a particular incident that started the process or was it an accumulation of things occurring that led to the idea. Henry responded that it was an accumulation of things taking place that led to the idea. The Commission has to do the hard work.

Chair Long thanked President Henry for his comments today. It was important for the Commissioners to hear a reminder that the work is important.

Consideration of Possible
Amendments to Rule 3 of the
Constitutional Ethics Rules including
Amendment 2016-01

Return to Agenda Item #4 (b).

Comments and Questions by Commissioners:

Commissioner Stocker appreciates the time and effort that Walker took with his proposed amendment. While she was reviewing the amendment, she discovered that the Commissioners had not reached an agreement on how to proceed with the rule amendment. She mentioned that Commissioner Hawkins brought up the idea of a simplistic form with possibly three questions to focus on making people aware of the ethical obligations rather than focusing on specific situations that might identify a conflict of interest.

She believes that we need to have more in-depth philosophical discussions on how to proceed before proposed amendments are being discussed.

Commissioner Hawkins mentioned there are two different issues in this process. The first issue is the form. He has a form that has three questions; a simplistic form. Director Slater will hand out some forms shortly for the Commissioners to review.

The second issue is the rule itself. He doesn't believe that the Commission should spend the time now to rewrite the rules before it is decided how to proceed. More discussion is required. He applauds the efforts of Commissioner Walker.

The Commission needs to determine if the current filers know the current rules. Next, the Commission needs to decide on how to proceed in revising the rules if it determines the current rules are not working as effectively as intended.

Chair Long questioned Walker as to the elimination of some of the required filers in his proposed amendment. She wants

to know what groups were eliminated.

Walker stated that the current rules focus on policy decision makers and people involved with purchasing decisions. He believes that those two groups are difficult to understand and identify so he removed those groups from filing disclosure forms. Rather, Walker focused on a result, i.e. a connection with the government that causes one to have a gain. In the end, the Commission can accomplish the same thing in a more simplified fashion.

Chair Long requested clarification as to whether he was focusing more on "what" to report rather than "who" reports.

Walker mentioned that the end result determines the reporter rather than a definition. Some people who report now may not report under his proposed amendment. He is not familiar enough with the internal workings of the multitude of state agencies to know the process of who is identified to be a required filer. For example, Walker mentioned the Department of Human Services and the Aeronautics Commission. Those two agencies are very different in most areas, like night and day. It was Walker's idea to focus on the end result and not on a definition that is difficult to understand.

Chair Long asked Walker to provide examples of someone who currently reports but would not report under Walker's proposed rule.

Walker provided an example regarding a state agency that was considering a contract for a facility to be placed at a local municipal air park. The person who was the most influential in making the decision and deciding who would be awarded the contract didn't fit the requirements to file a disclosure form. However, by focusing on the result rather than the definition, under his proposed amendment, that same person would have to report.

Commissioner Stocker asked Walker on how the person would be identified to report. Walker said that the process is self-reporting. Stocker mentioned that agency liaisons help to identify the required filers.

Chair Long inquired if the reporter themselves would have to identify if they are required to file.

Walker said that the agencies will still identify the required filers. However, the identification of filers may change when the leadership changes within the agency.

Chair Long stated that the lack of continued discussion has led to some sort of assumption that the Commission was looking at removing rules regarding the conflict of interest. The current discussion focuses on the financial disclosure statement and to the extent that the financial disclosure statement allows compliance with the rules.

Chair Long tends to agree with Commissioner Hawkins. In reference to his idea, two forms have been passed out to the Commissioners. A conflict of interest statement and a financial disclosure statement for candidates. It is a very different approach and one that will require some discussion.

Currently, Walker is taking the approach that the Commission needs to rework the rule. Chair Long believes that the Commission needs to review the statement that actually implements the rule and determine if the statement remains adequate to the task. Another thought is does the Commission need a different statement to better accomplish the task to provide more reliable information in a way that is easier to apply across all categories of required reporters.

Walker responded that it is his approach to focus on the rule rather than the form because he believes the rule mandates the form. He also mentioned that the agenda mentions discussion of Rule 3 and not discussion of the disclosure form. The rule is under consideration for modification.

Chair Long stated that all Commissioners have the same right to take their own approach, and today's discussion points out the differences as to the approaches. She does believe that the public comment taken so far has directed more towards the financial disclosure form and less towards to the rule. The comments have discussed the form, how the form operates and how currently it does not disclose enough important information to accomplish the task of financial disclosure.

Commissioner Pettigrew commented on the two forms handed out today. She believes that the forms are great ideas. She would request that the staff circulate the proposed forms to allow public comment on the proposed forms.

Slater mentioned that Commissioner Hawkins took a different approach in asking the staff to draft the forms to correspond with the ideas that he suggested in earlier meetings. Once the form is satisfactory to him, then Hawkins will request that the staff draft the rule. The form is dependent on the contents of Rule 3.

Pettigrew mentioned that it could be the Commission may reach the same outcome as Walker has with regard to Rule 3. She believes that the Commission needs to deal with the form the rule concurrently. To try to address the rule and not consider the comments taken on the form itself would not be judicious. The Commission has received much comment on the form itself.

Chair Long mentioned this matter is not on the agenda today for action.

Public Comment:

Mark Thomas, Oklahoma Press Association

Mr. Thomas has reviewed Walker's proposed Rule 3 Amendment. Most of his comments are wordsmithing. He appreciates that the form follows function. In the end, all the public sees is the form with the information available. The current form has a question regarding lobbyist relationship. It doesn't provide any real information.

He reviewed the proposed amendment; he had a hard time determining what information was new and what information falls under the current rule. He wants to comment on a few little things.

Rule 3.3 speaks to public officers rather than just persons. Are candidates for public office considered public officers or employees? There are those that probably don't fit either category. They are just persons who meet the requirement to file but are not considered public officers.

Rule 3.3 (4) mentions the chief administrative officer and the first assistant administrative officer. This particular language is plural in the current rule. Some agencies are large agencies that might have several first assistant administrative officers. The proposed amendment will only have two people filing in this capacity for each state agency.

The language in the proposed Rule 3.3 Section 6(a) has any

state officer or employee filing if they have a gain. Walker took out the fuzzy language of who influences policy and who influences purchasing. This is the section where Walker is trying to identify anyone involved with a contractual relationship will have to report. It falls back to the self-reporting process if they are involved in a contractual relationship.

Walker mentioned that he was influenced by the OSU professional who spoke at another meeting during public comment. He publishes a book that students purchase for his class. He reports now in accordance with OSU rules but doesn't report under the current Commission's rules.

Thomas said that the difficult part is that board members may not report under the proposed amendment. Walker spoke up to mention that all members of boards and commissions will still continue to report.

Thomas referenced Rule 3.4; only one financial disclosure report per year will be filed. Any additional contractual relationship would require the filer file an additional report.

Rule 3.6 has a couple of new paragraphs of language. An appointee would have to file a financial disclosure statement prior to an appointment. Thomas believes that is new language. The report must be filed no later than the day the person assumes the position to which he or she is appointed. Thomas asked Walker what happens if they don't file the report timely.

Walker stated that he was influenced by the Governor's application where the report is being filed before the appointment. The Governor wants to know in advance if there is a problem with a potential appointee. Other entities can make appointments and the appointees are not filing a disclosure report prior to the appointment. The appointees are in the same playing field as candidates. In drafting the language, Walker was influenced by the judges who are appointed to office. Other judges that make the appointments may not know things about the judicial appointees.

Thomas further discussed that the section on agency liaisons has been removed from the proposed amendment.

Thomas also noted that the proposed language for Rule 3.10 doesn't include the work address. The current rule has the work address disclosed on the form. Under the proposed language, a filer will not need to divulge the work address or any address. Thomas requested that the form still include some address for each filer. It is important information for the public to know.

Thomas' last question is regarding lobbyist information. Number 7 on the current form requires that the filer list if he or she has had any relationship with lobbyists. Thomas doesn't see the lobbyist language in the proposed language. Lobbyist relationships are equally important and good information for the public to know.

Thomas was reviewing the current form with the proposed language. Thomas also found that the private employment information, in addition to the occupational and professional license portion, was eliminated in the proposed language.

He also was reviewing the draft forms that were handed out for review. He doesn't understand how a new form that just has filers agree whether they know a rule will allow the public to continue to know key information.

He was done with his comments. He wants to continue to receive the same information that the current rule allows rather than less information as proposed by the amendment.

Chair Long thanked Mr. Thomas for his comments.

No further public comment.

Comments and questions by Commissioners and staff:

No further comment by Commissioner Walker.

Director Slater mentioned that the discussion should include who should be required to file, whether there should be different standards for different classes of filers, what information is reported, the frequency of the reporting, the availability of those records for consideration by the Commission. Commissioner Hawkins has mentioned that he would like to use the form as an educational tool.

Slater would like for the Commission to consider the efficacy of the final financial disclosure report which is filed during the

last thirty days of public service. He isn't sure as to the compliance rate of the final filings.

He presented some data to the Commission. At any given time, there may be 400-600 candidate committees, some of those candidates eventually become elected officials and they only file once per year.

Slater provided some estimated numbers regarding the financial disclosure filers: 1,800 board members and roughly 2300 employees involved with purchasing and policy decisions. He has asked Deputy Director Kemp to provide a breakdown of the staff hours utilized for the financial disclosure process.

Deputy Director Kemp passed out a document regarding PFD (personal financial disclosure) Staff Hours. She has noticed during her 2 ½ years with the agency that the staff spends an inordinate amount of time working on the financial disclosure process. This past year Kemp asked Bert Hale to start keeping track of her time that she spends on financial disclosure. Hale spends time on the maintenance side of the financial disclosure process; she spends time speaking with agency liaisons to help identify the required filers, and speaks with the filers to help them get their forms filed. Routinely, the staff responds to financial disclosure questions.

There are 4,417 financial disclosure filers in 2015. The names were identified by 260 liaisons. The document also references the annual filing schedule for the Commission. So, in addition to the financial disclosure process, the staff is under deadlines as to the filing schedule.

Kemp mentioned that she tried to break down the time spent on financial disclosure process for the staff as a whole and then individually for each staff member. This is a reference point to show how many hours each staff member spends working on this process. In April, May and June, the agency is very busy. The financial disclosure process really picks up in April. The month of May is even busier. In addition to the financial disclosure reports being due, there are lobbyist reporting deadlines. May 15th is the annual filing deadline for financial disclosure. The entire staff assists with the phone calls, questions, and emails during the month of May.

The staff spends a great deal of time interacting with the regulated community, in addition to planning for the

upcoming fiscal year turnover. In June, it quiets down a bit for everyone and staff is able to return to normal duties and work on the backlog.

Kemp mentioned that a significant amount of time was spent on the financial disclosure process in 2015. As a whole, the agency spent 1,093 hours on this process. This is very helpful information for the Commissioners to have as they work through the amendment process.

No further comments or questions.

Consideration, Discussion and Possible Action on Minutes for Public Hearing and Regular Meeting and Executive Session held on August 14, 2015

Pettigrew moved to approve minutes as presented for the public hearing, regular meeting and executive session held on August 14, 2015.

Hawkins seconded.

Walker mentioned that a word change needs to be made on page 6 of 13. He wants to change the word from equal to equally. Chair Long asked if there was any desire to make the word change in the sentence. She didn't find it to be that significant, so the change will not be made.

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

Motion carried.

Discussion of Agency Expenditures for the month of August, 2015

No discussion was held.

Executive Director's Report

Slater said that administrative hearings had been conducted in seven contested late filing fee cases involving legislative lobbyist or legislative liaison reports for July. He said the administrative law judge had affirmed four late filing fees, set aside two others and modified one. He said one of those had subsequently paid the fee. He said previously that 15 of 24 assessed late filing fees had paid. Two of the 24 still have not responded, and their compliance orders became final.

Slater said he met with First Congressional District Republican central committee members in Tulsa on August 24, 2015, to discuss new reporting Rules for political parties. He said he hoped to have similar meetings with both political parties in the future.

He said that Ethics Commission staff members would begin

participation in State Election Board workshops September 14th, continuing into October.

He said that 61 individuals had registered for "how to" training in the Guardian software system on September 21 and 24 and October 15 and 16.

Kemp gave a brief update on the software project. She had hoped that the new functionality would be demonstrated at the meeting today. It was close, but it required another test environment to continue testing and work through some issues. It should be available to demonstrate at the next meeting in October.

Slater reminded Commissioners of the Council on Governmental Ethics Laws (COGEL) conference in Boston on December 6-9, 2015.

General Counsel's Report

General Counsel Long stated there are no recent developments in ethics law to report on this month.

General Counsel Long stated the staff posted notice of the public hearing on Advisory Opinion Request 2015-03 on the Commission's website as well as directly notifying the Commission's email list. He stated the public hearing would occur at the October 9, 2015, Commission meeting. He stated a draft or multiple drafts of the opinion would be available at least 5 days prior to the meeting.

General Counsel Long stated the revocation of the Commission's administrative procedure act rules was effective today, so the rules were now officially revoked.

Consideration, Discussion and Proposed Action on Closed/Executive Session

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

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

Motion carried to go into Executive/Closed session at 11:30 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 12:02 p.m.

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

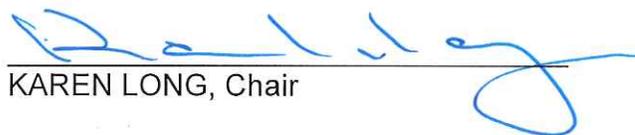
Motion carried.

Meeting ended at 12:05 p.m.



LEE SLATER, Executive Director

Approved on Behalf of the Commission:



KAREN LONG, Chair