MINUTES OF PUBLIC HEARING AND REGULAR MEETING
OF THE ETHICS COMMISSION
STATE OF OKLAHOMA
HELD DECEMBER 12, 2014

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, December 12, 2014, 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: Long, John Hawkins ["Hawkins"], Thomas Walker ["Walker"], Cathy Stocker, ["Stocker"], and Jo Pettigrew ["Pettigrew"]. 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 Pamela Williams, ["Williams"].

Observing all or part of the meeting: Jan Preslar, Attorney General's Office; Denise Davick, Attorney; Caroline Dennis, Senate staff; Samantha Davidson, Senate staff; Arnella Karges, Lobbyist; Jim Dunlap, Lobbyist; Barbara Hoberock, Tulsa World; Marie Price, Journal Record; and Shawn Ashley, E Capitol News.

Introductions and Announcements

Director Slater introduced Jan Preslar, Assistant Attorney General; she will be presenting later in the meeting. Mr. Jim Dunlap, a lobbyist, is in attendance this morning. He assisted us with testing the new lobbyist system.

Consideration of Amendment 2015-03.

<u>Explanation of proposed amendment by Director Slater</u>:

Section 1 makes it explicitly clear the prohibition in the rules of public use of property and funds applies to state offices, federal offices and political subdivisions.

Section 2 would allow a sitting elected official a 60-day period during which he or she could open a new campaign for a different year and transition from one campaign account to another.

Section 3 provides for registration and renewal of political action committees in January of each year. If the committee has not filed all of the reports in the preceding year, they are prohibited from renewing for the next year.

Section 4 provides language regarding committee filings. Except for good cause shown, if the committees file more than one report late, it is deemed to be a deliberate violation of the rules.

In addition, the new language will permit judicial candidates to refrain from filing reports during the 60-day period following an election until such time they are permitted to solicit and accept contributions prior to the next filing period under the Code of Judicial Conduct.

Section 5 adds the new language for candidate committees regarding the second late filing of a report as a deliberate intentional violation of the Rules.

Section 6 is a housekeeping change. This section provides new language relating to the reports of electioneering communications. The current rule requires that the filer indicate that they support or oppose a candidate. This would only require that they identify the candidate in the electioneering communication.

Section 7. New language that refers to when a state officer, employee or a state agency sponsors in part or un whole a conference, seminar, meeting or other event for which a state officer or employee solicits funds, goods or services to assist with expenses associated with the event. The sponsoring officer or agency shall create a special committee for that purpose. The committee registers and makes <u>one</u> report of contributions and expenditures within 180 days after the event is held.

Section 8 basically repeals the claw back language in the campaign finance reporting rules. I am told by campaign consultants that the current claw back period requires an inordinate time and effort by the committee.

Section 9 pertains to a practice that has blossomed over the years with agencies having decreased budgets. Under the current rules, they are prohibited from accepting scholarships. The rule will allow a state officer or employee to accept a

scholarship, a similar grant or subsidy to attend a conference. The sponsoring organization provides a scholarship for the state officer or employee to participate with all the costs being paid by the sponsoring organization. This practice is only permitted if the chief administrative officer of the agency that employs the state officer or employee certifies in writing to the Ethics Commission that the educational or training event will significantly assist the state officer or employee in discharging his or her duties. This is in addition to other requirements.

This section has an amendment to the original language. Currently, this provision would not apply to elected officials who report to the public. So I would propose that this be further amended to provide language for a report to be filed by elected officials. In addition, they don't need to go through the approval process like a state employee.

Section 10 is a housekeeping amendment to the Rules. A family relationship will operate as a waiver of some of the restrictions. The restriction between a state officer or employee and a person whose status restricts or prohibits certain activities under these Rules shall not apply when the two are family members.

Section 11 has a new amendment that Commissioner Pettigrew asked me to draft. It cleans up bad language in the proposed new language. Section 11 is intended to allow lobbyist principals to provide food and beverage for members of a committee or subcommittee of either house of the Legislature.

Slater requested a brief recess to go retrieve the proposed Amendment. Chair Long proposed that we continue on with the Explanation and come back to Section 11 with the proposed Amendment.

Section 12 is a similar exclusion for family members of lobbyists and legislative liaisons.

Section 13 requires someone who isn't an employee of the Commission who files a written complaint alleging a violation of any rules to cite the rule or rules alleged to have been violated, to describe in detail the facts alleged to have caused a violation of a rule to occur and the name of any individual involved in the alleged violation. In addition, the person needs to certify that he or she has personal knowledge of the facts alleged. It shall be a violation of the rule for any person, willfully, knowingly and without

probable cause, to make a false complaint alleging a violation of these rules. A frivolous complaint is defined as a complaint that is knowingly asserted in bad faith, was unsupported by any credible evidence, was not grounded in fact, or was unwarranted by existing law. It also provides language that prohibits any state officer or employee to take retaliation against another state officer or employee who files the report. Slater finished his explanation of the Amendment.

A quick break in the meeting was taken at 10:20 a.m. to allow Slater to retrieve a copy of the proposed Amendment to Section 11. Back on the record at 10:26 a.m.

Slater proposed that the language on page 15 be stricken and the new language inserted as follows: the reporting provisions of this section shall not include legislators who are not members of the committee or subcommittee nor shall it include legislative staff members who do not officially or regularly provide staff services to the committee or subcommittee. It is intended to make sure that it excludes those people that would have to be reported individually.

Commissioner Questions:

Commissioner Walker asked a question concerning Section 4, page 3, line 17. Wording of the provision applies only to judges of the District and does not apply to Appellate Judges. Slater commented that it would appear that it does not apply to Appellate Judges. He would need to review the Code of Judicial Conduct.

Walker further mentioned that the Code of Judicial Conduct applies to trial judges and appellate judges. Candidates elected to judicial office. Slater asked if "retained" was added to the provision, would it resolve the concern. Commissioner Walker proposed that the language read as follows: Candidates for election or retention to judicial office.

Slater mentioned a typographical error on page 17, line 10 that would change employer to employee.

Walker requested clarification as to page 5, line 20, regarding a candidate making reports after the Election. Walker proposed that "pre-election" be stricken. It will read as "one

report."

No further questions by Commissioners.

Public Comment:

Public comment will be taken as to Amendment 2015-03 and the proposed Amendments to the Amendment as written.

Denise Davick, Attorney, made one comment regarding travel of elected state officials in their official capacity and in their private affiliations with other organizations. In reading the rule, on its face, it appears to be worded fairly broadly. State officers do engage in travel that is related to other organizations and unrelated to their official capacities. She requested that the limited language be inserted to cover the private travel of elected state officials.

Director Slater spoke to an elected official with some of the same concerns. He discussed other rules that try to separate private activities and public activities. It is clear that private business activities are not covered by the Ethics Rules.

Caroline Dennis, Senate staff, commented on the reporting provision on this Section. The section is not a reporting requirement; reporting is in fact in another section. Does the language mean that a legislator who is a not a member of the Committee attended would not be included on the report by the lobbyist or does it mean that this legislator can't accept the meal?

Slater refers back up to page 15, line 10, provided the event is reported as required by these rules, it flips back over to the reporting provision. The intent is that if you have an event where food is provided to a committee or subcommittee and some legislator other than a member of the committee or subcommittee attends, that person would be reported individually by the lobbyist.

Arnella Karges of the State Chamber. Section 7, Amendment 3, page 8. I am a registered lobbyist. State Chamber is approached by elected officials to help with different events. All different activities. What are the reporting requirements as to contributions/sponsorships as to the events that we do on behalf of a request of a state legislator.

Slater said that the intent is for the officer or the state agency to make the one report if the name of the elected official is used.

This is very similar to an Inauguration committee. It would list the contributors. No reporting requirement for the entity providing the contributions.

Any contributions for the conference/seminar would be reported by the committee. When a fact-intensive situation occurs, please contact the Commission and the matter can be addressed at that time. Commission is happy to work with you to resolve all the reporting issues.

Discussion and Possible Action on Amendment 2015-03.

Discussion:

Commissioner Walker continues to be opposed to Section 9, page 13, starting at line 13. In the guise of education, we are opening Pandora's box. We are allowing interest groups of any type to lavish state officers and employees in the form of education. Unless the organization is registered in Oklahoma, the people of the State of Oklahoma would not know who sponsors the conference. I will vote no on that particular Amendment.

Walker asks a question regarding when a lobbyist hosts lunch for a committee and legislator X or staff person Y who is not a member or staff member of the committee goes over and gets a freebie, that must be reported individually?

Commissioner Pettigrew believed that the previous language was good but needed to be enhanced.

Pettigrew continued to Section B on page 13. We are moving into a new era of people going to more training and it seems official if you have to go through all the processes, it has to be approved by the officer of the agency, provide details. In the long run, it does more good than harm. If we see that it is being misused, then we may need to revise, amend it or even eliminate it. Deputy Director just attended a conference. We can launch it and monitor it.

Walker agrees 100% if it is limited to employees. He is convinced that if it were limited to employees, the benefits outweigh the harm. By opening it up to officers, the harm outweighs the benefits.

Chair Long addressed Walker's comments. The heart of Walker's concern is including "state officers" in the provision.

Walker mentioned that the chance of mischief is not nearly as

great as if it only includes employees.

Slater commented that both Commissioners have made excellent points. This is a growing practice and there have been requests by both legislative sources for the Commission to provide some guidance. If adopted and there is some abuse, the Commission can certainly amend it.

One example given to Slater is the National Conference of State Legislatures. Today, they provide scholarships to legislative staff to attend the conference. Otherwise, the staff members would not participate in the conference. Some of it applies to state officers and there is always potential for abuse. I don't know whether we all have the same concerns. If the Rule is adopted, the Commission can monitor it carefully and deal with any abuses appropriately.

Chair Long mentioned that the "state officer" provision could be removed and only state employee provision be considered. In terms of a legislative conference, there isn't as much concern. For today, maybe we could remove state officers to address Walker's concerns.

Walker further commented that Director Slater had a good point in mentioning the professional organization. Professional conferences are one thing and I think that we are opening up a window to allow potential for abuse. We can't monitor it. We won't know who sponsors the conference. No way to trace the dark money. The burden should be on those officers to convince the Ethics Commission. I would request that we tweak the language to include state employees and maybe amend the language to allow the state officers who are members of an organization of similar officers, I am okay with such language. National Prosecuting Organization is an example.

Pettigrew asked Walker if it would help to include language if there was an approval by the Ethics Commission. It would put the commission in the role of monitoring.

Slater has a concern of limiting to state employees and we are relying currently on general definitions of state employees and state officer. Is the Deputy Director a state employee or a state officer? We will need to refine it a little more if we make the distinction.

Commissioner Hawkins asked if there is language that determines the level of reporting. What's the reason for prohibition? Excessive use or are we trying to prohibit any use? Would it be reasonable to put a monetary limitation into the provision? It doesn't prohibit it but minimizes the level of potential abuse.

Slater said that Section 9 could be removed and the Commission could consider the rest of the package today. There is another meeting in January to consider Amendments.

Chair Long is in agreement with postponing any action on Section 9 until the next meeting and allowing another opportunity for public comment.

Slater mentioned it would also remove the first amendment to Section 9 regarding elected state officers.

Chair Long asked for clarification of the proposed Amendments.

Motion:
Walker made the following motion:
Madam Chair, I move the Commission adopt that which was submitted to us as Amendment 2015-03 with the following changes. On page 3, line 17, striking the word "elected" and substituting the words "for election or retention". On page 5, line 20, striking the word "pre-election". Eliminating Section 9 in its entirety. On page 15, starting on line 14, eliminating all of those words that are underlined and substituting the following words: the reporting provision of this section shall not include legislators who are not members of the committee or subcommittee, nor shall it include legislative staff members who do not officially or regularly staff services for the committee or subcommittee. On page 17, line 10, striking the word "employer" and substituting the word "employee".

Hawkins seconded the Motion.

Commissioner Pettigrew enters a change in addition to the Motion. Provided that Section 9 would be reconsidered for discussion or approval at the January meeting.

Walker – yes, Hawkins – yes, Stocker – yes, Pettigrew – yes, Long – yes.
Motion carried.

Question from Commissioner Walker:
He mentioned that it might be helpful to notify specifically all the state agency heads that might be a part of a professional organization. To let them know so they can provide input. My sense is that we will vote on them and it's the last meeting for action on Section 9.

Consideration, Discussion and Possible Action on Minutes for Public Hearing, Regular Meeting and Executive Session held on November 14, 2014.

Walker moved to approve minutes of the November 14, 2014 public hearing, regular meeting and executive session. Stocker seconded. Roll was called and the vote was as follows: Walker - yes, Stocker - yes, Hawkins – yes, Pettigrew – abstain, Long – yes. **Motion carried.**

Discussion of Agency Expenditures for the month of November, 2014.

Chair Long reminded Commissioners that at the last meeting a vote was taken to only have discussion on the minutes rather than voting on the monthly expenditures.

Slater mentioned that corrected copies of the Expenditure summary was provided to the Commissioners this morning with no substantive changes.

Update on Oklahoma Open Meeting Act and Oklahoma Open Records Act by Jan Preslar, Assistant Attorney General.

Presentation on Oklahoma Open Meeting Act and Oklahoma Open Records Act. General Counsel Long was present at my presentation at Metro Tech yesterday.

Executive Director's Report.

Slater said the agency had submitted a budget request for Fiscal Year 2016 through the Office of Management and Enterprise Services for a total of $2,182,129, a decrease of nearly $275,000 from the agency's total appropriation of $1,456,749 in FY 2015. Slater said it would require $900,129 to continue current operations with new software, including one non-appropriated position that was being funded from the revolving fund. He said the agency had renewed its request for $152,000 for continuing education and compliance functions with two full-time employees. He said the budget request included $100,000 seed money for the Political Subdivisions Enforcement Fund.

Slater announced the resignation of Suzi Bryan, the agency's auditor/investigator. He said January 6, 2015, would be her last day on the job but that she would remain on the payroll until mid-February. He noted her outstanding service and said she would be missed.

Slater said that Deputy Director Kemp and General Counsel Long had conducted a continuing education program for the

Senate Republican caucus, while he and Kemp had conducted a program for the House Democrat caucus. He said he also had spoken to the House freshmen and had scheduled appearances for the House Republican caucus and for municipal officials in Oklahoma City as well as requests for additional appearances before the Senate Republican caucus and the House Democrat caucus.

He said that lobbyists and legislative liaisons were using the new software for registration for the 2015 session.

Kemp reported that for the last month testing of the new software was an agency priority. Kemp thanked the staff who had to be very flexible with their schedules to accommodate testing. The system went live on Wednesday of this week. In addition to lobbyist registration, we took our first steps towards digitizing the financial disclosures. Next we will be focusing on Campaign Finance Registration and Lobbyist reporting.

General Counsel's Report

General Counsel Long briefly discussed the increases to contribution limits to federal political parties in the federal spending bill.

General Counsel Long then gave an update on the settlement agreement in the Stand for Children, Inc. matter. He stated that Stand for Children, Inc. quickly paid the $10,000 fine in the settlement agreement and has willingly cooperated on all other matters. The only outstanding item is for a representative of Stand for Children, Inc. to attend a relevant education program by the Ethics Commission that will occur at a later date as those programs become available.

Consideration, Discussion and Proposed Action on Closed/Executive Session

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

Motion carried to go into Executive/Closed session at 12:20 p.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 **1:12 p.m.** Pettigrew seconded. Roll was called and the vote was as follows: Walker – yes, Pettigrew – yes, Hawkins – yes, Stocker – yes, Long – yes.

Motion carried.

14-015

Commissioner Walker made the following motion: Madam Chair, I move the Commission determine that the information it has received in support of Complaint 14-015 does not provide an adequate basis for the belief that a violation of this Title may have occurred and the Complaint be dismissed.

Hawkins seconded.

Roll was called and the vote was as follows: Walker – yes, Hawkins – yes, Stocker – yes, Pettigrew – yes, Long – yes.
Motion carried. 14-015 is dismissed.

14-017

Commissioner Walker made the following motion: Madam Chair, I move the Commission find that the information it has received in support of Complaint 14-017 provides an adequate basis for the belief that a violation of this Title may have occurred and that an investigation of the suspected violation is warranted and therefore, authorize an investigation be conducted and vest the staff with the authority to issue subpoenas.

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

Meeting ended at 1:21 p.m.

LEE SLATER, Executive Director

Approved on Behalf of the Commission:

KAREN LONG, Chair