

MINUTES OF REGULAR MEETING AND PUBLIC HEARING
OF THE ETHICS COMMISSION
STATE OF OKLAHOMA
HELD SEPTEMBER 14, 2018

- Call to Order. Upon notice, with the 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 forty-eight (48) hours in advance with the Office of the Secretary of State, a regular meeting of the Ethics Commission of the State of Oklahoma ["Commission"] was called to order on Friday, September 14, 2018, at 10:01 a.m. Chair John Hawkins 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: Chair John Hawkins ["Hawkins"], Cathy Stocker ["Stocker"], Vice-Chair Karen Long ["Long"], Holly Johnson ["Johnson"] and Charles Laster ["Laster"]. A quorum of members was declared.
- Staff & Visitors. Commission staff members present at all or part of the meeting were Ashley Kemp ["Kemp"], Jan Preslar ["Preslar"], Stephanie Black ["Black"] and Ariel Hawkins.
- Observing all or part of the meeting: David Oakley, LegisOK; Vance Harrison, Broadcaster; Tom Gann, Representative District 8; A.J. Ferrate, OK Republican Party; Debbie Gann; Caroline Dennis, Senate; Ashley Kehl, Senate; Denise Lawson, Attorney; Glenn Coffee, Attorney; Shawn Ashley, eCapitol; Barbara Hoberock, Tulsa World; Mark Thomas, OK Press Association; Nolan Clay, The Oklahoman; Bobby Cleveland, Representative.
- Open Meeting Act Compliance. In compliance with Open Meetings Act.
- Introductions and announcements. Commissioner Holly Easterling is now Holly Johnson.
- Consideration and discussion of Amendment 2019-01. This amendment modifies the Campaign Finance Rules in Rule 2 of the Constitutional Ethics Rules regarding coordination. Explanation of Amendment 2019-01 by Executive Director Kemp.
- Comments by Commissioner Laster.

Public comment. Glenn Coffee commented that the purpose for the draft language proposal is to clarify the definition of what coordination is so that consultants can advise and candidates will be able to clearly understand what activities are inside or outside the bounds of proper campaigns. As independent expenditures flourish, clients want to know what the rules are so they can stay within them; they feel the rule as it stands is nebulous and unclear. So rather than determining a case law after the fact to ensure compliance with ethics rules, people would like to clarify the definition of coordination.

Comments and questions by Commissioners and staff. Comments by Hawkins and Preslar.

Explanation of Amendment 2019-02 by Executive Director Kemp.

Consideration and discussion of Amendment 2019-02. This amendment modifies the Lobbyist Rules in Rule 5 of the Constitutional Ethics Rules regarding disclosure of funds expended to influence a vote of the legislature concerning pending legislation.

Comments by Commissioner Long.

Public Comment. Representative Bobby Cleveland commented, "Speaking from a representative side, I think Commissioner Long said it perfectly. We need to know who these people are. How they sent out postcards about you and not knowing who these people are, that is just wrong. It is wrong as can be."

A.J. Ferrate, on behalf of the Republican party, commented that he does not believe this amendment is a wise route to go down because anonymous speech has never been ruled unconstitutional. He highly recommends the Commissioners take very serious consideration upon amending this rule, especially condering the possible negative effects it could have on entities such as trade associations. He was concerned primarily that this proposed amendment could lead us down a path of overly burdensome and restrictive regulation in the state of Oklahoma.

Comments and questions by Commissioners and staff. Comments by Chair Hawkins.

Explanation of Amendment 2019-03 by Executive Director Kemp.

Consideration and discussion of Amendment 2019-03. This amendment modifies the Conflicts of Interest Rules in Rule 4 and Lobbyist Rules in Rule 5 of the Constitutional Ethics Rules. A period of time will be established which must pass before an individual who served as an elected state officer or chief administrative officer may lobby, influence, or attempt to influence actions of state officers and employees of the state entity the individual previously served, had oversight, or interacted with. This will only impact individuals who are compensated for those activities by an entity other than the State of Oklahoma.

Comments by Commissioner Hawkins. None.

Public Comment. Representative Tom Gann encourages the Commission to "stay the course on this issue" because it is a Rule that is "desperately needed." He explained that a cooling off period prevents self-serving behavior and undue influence in the state government because such a period provides a safeguard to such activity. He explained further that such a safeguard provides independence and credibility in our government, commenting that "independence is paramount." Rep. Gann continued by comparing this proposed Rule amendment to a common safeguard used in private businesses that emerged after the Enron scandal -- the Sarbanes-Oxley Act. In his conclusion, he contended that such an amendment will verify the state's commitment to transparency.

A.J. Ferrate, in opposition of the proposed Rule amendment, maintains that the amendment is unconstitutional based on case law: *Brickman v. Budish* and *Citizens United*. Specifically, he contends that the proposed amendment is not narrowly tailored and addresses a concern of which no evidence of wrongdoing exists. He concluded by addressing his concerns regarding the Commission's jurisdiction over lobbyists, explaining that he does not agree that the Commission has jurisdiction over lobbyists due to separation of powers.

Glenn Coffee initially addressed his concern with the description of the proposed Rule amendment in the agenda; he contended that the description that states the amendment only "impacts individuals who are compensated for those activities by an entity other than the State of Oklahoma" is in direct conflict with the text of the proposed Rule amendment. He then explained why he opposed the proposed Rule amendment, contending that the Rule may be applied inconsistently and have an effect on state officers that extends beyond the two-year period due to the varying term limits for the state officers and Commission's ability to waive the application of the Rule at its discretion.

Comments and questions by Commissioners and staff. Comments by Kemp, Long, and Hawkins.

Discussion and possible action on Amendment 2019-03 of the Constitutional Ethics Rules.

Commissioner Long moved to adopt Amendment 2019-03.

Commissioner Laster seconded.

Roll was called and the vote was as follows: Long - yes, Laster - yes, Hawkins - yes, Stocker - yes, Johnson - yes.

Motion carried.

Consideration, discussion, and possible action on minutes for the regular meeting held July 13, 2018 and the executive sessions held June 8, 2018 and July 13, 2018.

Commissioner Stocker moved to approve the minutes for the regular meeting held July 13, 2018 and the executive sessions held June 8, 2018 and July 13, 2018.

Commissioner Johnson seconded.

Roll was called and the vote was as follows: Stocker - yes, Johnson - yes, Hawkins - yes, Long - yes, Laster - yes.

Motion carried.

Request for advisory opinion.

Explanation of AOR- 2018-01, request from Stephanie Hoskin, Treasurer of Friends of Chuck Hoskin 2016 by Executive Director Kemp.

Commissioner Stocker moved to direct the Executive Director to schedule and provide notice of a hearing on AO Request 2018-01, to prepare draft AOs for consideration by the Commissioner, and to accept comments on the request.

Commissioner Johnson seconded.

Roll was called and the vote was as follows: Stocker - yes, Johnson - yes, Hawkins - yes, Long - yes, Laster - yes.

Motion carried.

Executive Director's Report.

Report was provided by Executive Director Kemp on agency expenditures for the months of July and August 2018, continuing education programs and compliance, status of report review of 2018 candidates, and updates on state questions and reporting requirements on the 2018 General Election ballot.

Consideration, discussion and possible action on Closed/Executive session.

Commissioner Long moved that pursuant to counsel's advice as set forth in the agenda, the Commission go into executive session in the Commission offices in Room G-27.

Commissioner Laster seconded.

Discussion or comments by commissioners. None.

Roll was called and the vote was as follows: Long - yes, Laster - yes, Hawkins - yes, Stocker - yes, Johnson - yes.

Motion was carried to go into Executive/Closed session at 11:29 a.m.

Executive session was held in the conference room located within the Ethics Commission office on the ground floor of the Capitol, Rm. G-27.

Possible Action to return to Open Session.

Commissioner Stocker moved to reconvene in Open Session at 12:17 p.m.

Commissioner Johnson seconded.

Discussion or comments by Commissioners. None.

Roll was called and the vote was as follows: Stocker - yes, Johnson - yes, Hawkins - yes, Long - yes, Laster - yes.

Motion carried.

Consideration, discussion and possible action on items considered in executive session.

Commissioner Long moved to dismiss Case No. 2014-10.

Commissioner Stocker seconded.

Roll was called and the vote was as follows: Long - yes, Stocker - yes, Hawkins - yes, Johnson - yes, Laster - yes.

Motion carried.

Commissioner Long moved to dismiss Case No. 2018-04.

Commissioner Stocker seconded.

Roll was called and the vote was as follows: Long - yes, Stocker - yes, Hawkins - yes, Johnson - yes, Laster - yes.

Motion carried.

Commissioner Long moved to dismiss Case No. 2018-09.

Commissioner Johnson seconded.

Roll was called and the vote was as follows: Long - yes, Johnson - yes, Hawkins - yes, Stocker - yes, Laster - yes.

Motion carried.

Commissioner Long motioned to open an investigation on 2018-10, but then withdrew the motion.

Commissioner Long moved to authorize the Executive Director to proceed under Rule 6.10 as discussed in Executive Session regarding Case No. 2018-11.

Commissioner Johnson seconded.

Roll was called and the vote was as follows: Long - yes, Johnson - yes, Hawkins - yes, Stocker - yes, Laster - yes.

Motion carried.

Commissioner Long moved to authorize the Executive Director to proceed under Rule 6.10 as discussed in Executive Session regarding Case No. 2018-14.

Commissioner Johnson seconded.

Roll was called and the vote was as follows: Long - yes, Johnson - yes, Hawkins - yes, Stocker - yes, Laster - yes.

Motion carried.

Commissioner Long moved to authorize the Executive Director to proceed under Rule 6.10 as discussed in Executive Session regarding Case No. 2018-15.

Commissioner Stocker seconded.

Roll was called and the vote was as follows: Long - yes, Stocker - yes, Hawkins - yes, Johnson - yes, Laster - yes.

Motion carried.

Commissioner Long moved to authorize a formal investigation on Complaint C-18-16 based on the determination that there is reasonable cause to believe that the person or persons named in the complaint have violated Campaign Finance Ethics Rule 2.

Commissioner Stocker seconded.

Roll was called and the vote was as follows: Long - yes, Stocker - yes, Hawkins - yes, Johnson - yes, Laster - yes.

Motion carried.

Commissioner Long moved to authorize a formal investigation on Complaint C-18-17 based on the determination that there is reasonable cause to believe that the person or persons named in the complaint have violated Conflicts of Interest Ethics Rule 4.

Commissioner Stocker seconded.

Roll was called and the vote was as follows: Long - yes, Stocker - yes, Hawkins - yes, Johnson - yes, Laster - yes.

Motion carried.

Commissioner Long moved to authorize a formal investigation on Complaint C-18-19 based on the determination that there is reasonable cause to believe that the person or persons named in the complaint have violated Campaign Finance Ethics Rule 2.

Commissioner Johnson seconded.

Roll was called and the vote was as follows: Long - yes, Johnson - yes, Hawkins - yes, Stocker - yes, Laster - yes.

Motion carried.

Commissioner Long moved to authorize a formal investigation on Complaint C-18-20 based on the determination that there is reasonable cause to believe that the person or persons named in the complaint have violated Campaign Finance Ethics Rule 2.

Commissioner Stocker seconded.

Roll was called and the vote was as follows: Long - yes, Stocker - yes, Hawkins - yes, Johnson - yes, Laster - yes.

Motion carried.

Commissioner Long moved to authorize a formal investigation on Complaint C-18-21 based on the determination that there is reasonable cause to believe that the person or persons named in the complaint have violated Conflicts of Interest Ethics Rule 4.

Commissioner Johnson seconded.

Roll was called and the vote was as follows: Long - yes, Johnson - yes, Hawkins - yes, Stocker - yes, Laster - yes.

Motion carried.

Commissioner Long moved to authorize a formal investigation on Complaint C-18-22 based on the determination that there is reasonable cause to believe that the person or persons named in the complaint have violated Campaign Finance Ethics Rule 2.

Commissioner Stocker seconded.

Roll was called and the vote was as follows: Long - yes, Stocker - yes, Hawkins - yes, Johnson - yes, Laster - yes.

Motion carried.

New Business.

None.

Adjournment.

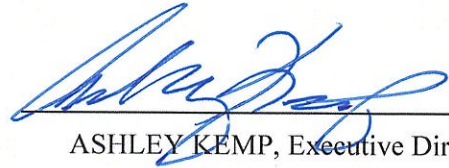
Commissioner Laster moved to adjourn.

Commissioner Johnson seconded.

Roll was called and the vote was as follows: Laster - yes, Johnson - yes, Hawkins - yes, Stocker - yes, Long - yes.


Motion carried.

Meeting ended at 12:26 pm.



ASHLEY KEMP, Executive Director

Approved on Behalf of the Commission:



JOHN HAWKINS, Chair