

MINUTES OF REGULAR MEETING AND PUBLIC HEARING  
OF THE ETHICS COMMISSION  
STATE OF OKLAHOMA  
HELD DECEMBER 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, December 14, 2018, 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: Chair Karen Long, Vice-Chair Charles Laster ["Laster"], John Hawkins ["Hawkins"] and Cathy Stocker ["Stocker"]. 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"] and Ariel Koerner ["Koerner"].
- Observing all or part of the meeting: David Oakley, LegisOK; Rick Tepker, Prof. Law - OU; Denise Lawson, Attorney; Glenn Coffee, Attorney; David Ambro, Citizen; Trent England, OCPA; Clint Colbert, Citizen; Jim Dunlap, Lobbyist; Shawn Ashley, eCapitol; Paul Monies, Oklahoma Watch; Matt Duehning, Senate; Barbara Hoberock, Tulsa World; John Tidwell, AFP OK; Adam Mayey, AFP OK; Kevin Wallace, Representative; Seth Rott, Lobbyist; AJ Ferate, OK Rep. Party; Dawn Watson, Lobbyist; Melodye Blancett, Representative.
- Open Meeting Act Compliance. In compliance with Open Meetings Act.
- Introductions and Announcements. Ariel's name is now Ariel Koerner, formerly Hawkins. Action is unlikely on 2019-01 and 2019-02.
- Public Hearing of Amendment 2019-01. This amendment modifies the Campaign Finance Rules in Rule 2 of the Constitutional Ethics Rules clarifying the Rules about coordinated activities to aid in determining what activities will and will not be considered contributions. Explanation of Amendment 2019-01 by Executive Director.

Comments by Commissioner Laster. None.

Public Comment.

**Glenn Coffee**, attorney, requests clarification on how to distinguish purchased campaign communications and content published in the public domain under this proposed rule amendment. He also recommends the Commission place a safe harbor within the proposed amendment for candidates and their committees to protect them from liability in situations where the candidate or candidate committee places content in the public domain, takes reasonable steps to protect that information, and that content is later independently disseminated by third parties. Further, he would like information on whether a candidate can tie limitations of use to his/her campaign communications under the First Amendment and whether requiring such limitations, such as requiring consent of use of campaign communications, are enforceable.

**AJ Ferate**, on behalf of the Oklahoma Republican party, contends that the proposed rule amendment potentially requires candidate committees to protect certain information that no one else is required to protect, including those that have an interest in protecting such information like corporations. He also questioned whether there is a time limit under this proposal due to the possibility of communications being disseminated years after the original publication. Lastly, he requests the Commission further consider the implications the rule proposal may have on the definition of coordination.

Comments and discussion by Commissioners and staff. Comments by Long and Director Kemp.

Discussion and possible action on Amendment 2019-01 of the Constitutional Ethics Rules.

No action taken.

Public Hearing of Amendment 2019-02. This amendment modifies the Lobbyist Rules in Rule 5 of the Constitutional Ethics Rules concerning disclosure of source and funds used for communications to influence a vote of the legislature concerning pending legislation.

Explanation of Amendment 2019-02 by Executive Director.

Comments by Commissioner Long. None.

Public comment.

**AJ Ferate, on behalf of himself**, comments that anonymous speech is free speech, and the proposed rule amendment cause a chilling effect on speech. He reiterated his point via examples of historical events, including NAACP v. Alabama, where the US Supreme Court, with the intention of protecting African Americans, ruled that regulations and restrictions cannot be put on intended activities of an organization, and Proposition 8 in California, where people lost their jobs for contributing to the cause.

He read some comments from letters provided by other organizations:

- **American Legislative Exchange Committee**, whose political activities are handled via a 501(c)(4), believes the proposed amendment is too broad and would effect citizen's normal course of business and private activities, forcing them to add a disclaimer, names and address of donors on any campaign communications, which would violate individual privacy rights. Further, it contends that the proposal would cause a chilling effect on speech for fear of non-compliance of a vague rule.
- **People United for Privacy** urges the Commission to withdraw and reconsider the proposed rule amendment due to its broad and ambiguous language that it believes is likely to cause a chilling effect on speech and opposes the fundamental right under the 1<sup>st</sup> Amendment to privately support causes and organizations.
- **Institute for Free Speech** contends that the proposed rule amendment would be overreaching because it is not narrowed to only affect paid communications with a state official; instead, the organization believes it is broad enough to affect private conversations of citizens if those conversations are made for the purpose of influencing a vote on proposed legislation. The organization would like clarification on how to define "to influence" and why the Commission chose not to use an objective test in the proposal.

**Seth Rott**, a registered lobbyist, questions the Commission's jurisdiction over the individuals that will be regulated under this proposed rule amendment, including individuals who are not candidates, lobbyists, or state officers or employees. He also is concerned this amendment may cause a "political hitlist" that could negatively affect the individuals engaged in activities supporting or opposing legislation. Mr. Rott closed by expressing the historical implications of anonymous speech and his concern of a chilling effect the proposal may have on the public and private citizens' engagement with their legislators.

**Dawn Watson**, a contract lobbyist with a non-profit client and former employee of non-profit organizations, begins by expressing appreciation for the proposed rule amendment excluding communications that are made solely with members of associations and groups because this is often how organizations communicate. She went on to explain that transparency provided in disclosures are important to non-profits, but she is afraid that this proposed rule amendment may cause a chilling effect on real people getting involved in government, including private citizens that work with non-profit organizations to support or oppose legislation.

**Trent England, with Oklahoma Council of Public Affairs (OCPA)**, expressed his concern with the ability of citizens to identify when they are engaged in the type of activity that would require disclosure under this proposed rule amendment, and the chilling effect the proposal may cause on citizen engagement and freedom of speech. He expressed his hope for the Commission to put democracy before the concerns of a few legislators. He believes regulating private citizens has nothing to do with the Commission's duty to regulate state officers and employees, and he believes the proposed amendment is unconstitutional.

**Representative Melodye Blancett** provided clarification for why she brought this rule amendment proposal to the Commission. She indicated that her objective bringing is to further enable citizens of Oklahoma, who are constantly bombarded with sophisticated political communications, to understand who is behind these messages. She explained that she does not want to chill speech, rather her intention is to allow those Oklahoma citizens who are not normally engaged in lobbying, lawmaking, or state employment to have an opportunity to find out who is behind the communications in order to make more informed decisions on whether to support or oppose certain issues.

**John Tidwell, State Director for Americans for Prosperity**, commented that Oklahoma citizens should be concerned because this proposed rule amendment opens a new category lobbyist reporting for private citizens. He also expressed concern over the possible chilling effect of the proposal, and he suggests the Commission contact the Attorney General and Solicitor General, if they have not done so already, for the constitutional implications of this proposal.

Comments and discussion by Commissioners and staff. Comments by Director Kemp.

Discussion and possible action on Amendment 2019-02 of the Constitutional Ethics Rules.

No action taken.

Public Hearing of Amendment 2019-04. This amendment modifies the Campaign Finance Rules in Rule 2 of the Constitutional Ethics Rules involving candidate committee to candidate committee contributions.

Explanation of Amendment 2019-04 by Executive Director.

Comments by Commissioner Laster. None.

Public Comment. None.

Comments and discussion by Commissioners and staff. None.

Discussion and possible action on Amendment 2019-04 of the Constitutional Ethics Rules.

Commissioner Laster moved to amend 2019-04 as proposed.

Commissioner Hawkins seconded.

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

**Motion carried.**

Minutes of Regular Meeting and Public Hearing held December 14, 2018

Public Hearing on Advisory Opinion Request AOR-2018-01, request by Stephanie Hoskin, Friends of Chuck Hoskin.

Carried over to next meeting.

Consideration, discussion, and possible action on minutes for the regular meeting, public hearing, and executive session held October 12, 2018.

Commissioner Stocker moved to approve the minutes for the regular meeting, public hearing, and executive session held October 12, 2018.

Commissioner Laster seconded.

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

**Motion carried.**

Consideration, discussion, and possible action on Commission meeting dates for calendar year 2019.

Commissioner Hawkins moved to approve the Commission meeting dates for calendar year 2019.

Commissioner Laster seconded.

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

Executive Director's Report.

Report was provided by Executive Director Kemp on agency expenditures for the months of October and November 2018, FY 20 budget request, lobbyist and liaison registration, continuing education programs and compliance, and COGEL 2018.

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

Commissioner Laster 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 Stocker seconded.

Discussion or comments by commissioners. None.

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

**Motion was carried to go into Executive/Closed session at 12:11 p.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 1:56 p.m.**

Commissioner Laster seconded.

Discussion or comments by Commissioners. None.

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

**Motion carried.**

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

Commissioner Laster moved to approved the proposed settlement agreement to resolve Case No. 2018-15.

Commissioner Stocker seconded.

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

**Motion carried.**

Commissioner Laster moved to authorize the Executive Director to proceed under Rule 6.10 as discussed in Executive session for Case No. 2017-10.

Commissioner Stocker seconded.

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

**Motion carried.**

Commissioner Laster moved to dismiss Case No. 2018-17.

Commissioner Hawkins seconded.

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

**Motion carried.**

Commissioner Laster moved to authorize the Executive Director to proceed under Rule 6.10 as discussed in Executive session for Case No. 2018-19.

Commissioner Stocker seconded.

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

**Motion carried.**

Commissioner Laster moved to dismiss Case No. 2018-21.

Commissioner Hawkins seconded.

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

**Motion carried.**

New Business.

None.

Adjournment.

Commissioner Laster moved to adjourn.

Commissioner Stocker seconded.

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

**Motion carried.**

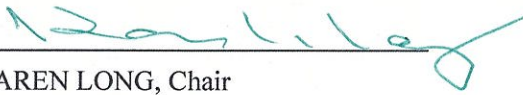
Meeting ended at 2:00 p.m.



Minutes of Regular Meeting and Public Hearing held December 14, 2018

  
ASHLEY KEMP, Executive Director

Approved on Behalf of the Commission:

  
KAREN LONG, Chair