

**OPEN SESSION**  
**MINUTES OF THE MEETING OF THE**  
**NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION**

**Friday, October 21, 2016**

**State Capitol, Room 1525**

**Lincoln, Nebraska**

**Call to Order** – Commissioner Conway called the meeting to order at 9:00 a.m. and announced the location in the meeting room of a copy of the Public Meetings Law. Commissioner Conway also stated that the Open Session meeting would be operating according to the Amended Open Session Agenda.

Roll Call –

Sean Conway – Present  
Jeffery Davis - Present  
Matthew Enenbach – Present  
John Gale – Present  
Douglas Hegarty - Present  
Andrew Loudon - Present  
Jeffery Peetz - Present  
Timothy Schulz - Excused  
James Ziebarth – Excused

**Approval of the Open Session Minutes of the August 5, 2016 Meeting** – Commissioner Conway referred the Commissioners to their copies of the Open Session Minutes of the previous meeting.

**Motion by Gale, second by Peetz, that the Open Session Minutes as of the August 5, 2016 meeting be approved as presented** - Roll Call Vote: Commissioners Conway, Davis, Gale, Hegarty, and Peetz voted yes. Commissioners Enenbach and Loudon abstained. Motion carried (5-0-2).

**Report on late filing fees and requests for relief:** The Executive Director indicated that there were no requests for relief.

**Determination as to whether Complaint states a cause of action: Andrew Sullivan v. Ernie Chambers (#16-24) (Open Session at Respondent's request)** - Executive Director Daley indicated that he would defer to General Counsel Danberg.

General Counsel Danberg reported that this complaint was filed against Senator Ernie Chambers on August 17<sup>th</sup> 2016. The complaint alleged that stationary from the Nebraska Legislature was improperly used by Senator Chambers when he

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wrote various compositions of prose, poetry and illustrations of Senator Kintner. The compositions appeared to demand that Senator Kintner resign from the Legislature. Mr. Danberg indicated that the allegation would be that Senator Chambers violated §49-14,101.01(2) of the Nebraska Political Accountability and Disclosure Act (NPADA). This section of the act prohibits the use of public resources for non-public or private purposes.

Discussion followed.

**Motion by Loudon, second by Enenbach, to dismiss the complaint for failure to state a violation or cause of action over which the Accountability and Disclosure Commission has jurisdiction because there is no evidence that a public resource was used for non-public purpose in case #16-24 – Roll Call Vote: Commissioners Conway, Davis, Enenbach, Gale, Hegarty, Loudon and Peetz voted yes. Motion carried (7-0-0).**

**Executive Director's Report (includes personnel activity, budget status, budget process and litigation status) –** – The Executive Director indicated that the Commission is now 3 months into the current budget year and has expended approximately 12% of its budget.

Executive Director Daley explained a downward trend in the NADC cash fund as payments are made to finance the electronic filing project.

The Executive Director indicated that Lobbyist and Principal 3rd Quarterly Reports disclosing receipts and expenditures are due on October 31st.

Executive Director Daley stated that the General Election will be held on November 8th. The 1st General Campaign Statements were due on October 11th. The 2nd General Election Campaign Statements are due October 31st. Statements that have been filed are available for review on the Commission website.

The Executive Director indicated that Mr. Danberg would report on litigation.

The General Counsel indicated that in the Michael Meister case, a proposed Settlement Agreement has been reached. In the agreement Mr. Meister agrees he violated the NPADA and provides for the payment of late filing fees in the amount of \$1,000. Mr. Danberg indicated that the approval of the Settlement Agreement would be before a Lancaster County District Court Judge on October 31st 2016.

The Executive Director referred the Commission to the Executive Director's Report that was prepared on October 13th. It indicates the intention of the Commission to send two staff members to the COGEL-Conference on Governmental Ethics Laws conference in New Orleans from December 11th

through the 14th. The Director pointed out that on October 14th a memo from the Governor's Office was sent to all state agencies. It announced the initiation of a ban on all non-essential out-of-state travel. Executive Director Daley explained that it was appropriate for the Commission decide if the attendance of NADC staff at the conference was essential or non-essential. Mr. Daley explained that the law in the area of campaign finance disclosure is constantly changing. Campaign activity touches on the First Amendment and results in regular litigation. It is important to remain well informed on campaign financing vehicles such as 527 organizations, Super PACs, dark money and issue ads. Daley further noted that the Commission is in the process of spending several hundred thousand dollars on an electronic campaign finance disclosure system. The COGEL Conference includes several sessions on IT issues. He stated that it seemed appropriate to provide the staff member who will deal with these issues with the opportunity to understand what challenges, issues and solutions have been experienced by others.

Discussion followed.

**Motion by Gale, second by Peetz, that the Commission authorize Executive Director Frank Daley and such other Commission staff person as he designates with IT credentials to attend the Conference on Governmental Ethics Laws meeting in New Orleans from December 11th thru December 14 and that such attendance is for various essential purposes of the Commission** - Roll Call Vote: Commissioners Conway, Davis, Enenbach, Gale, Hegarty, Loudon, and Peetz voted yes. Motion carried (7-0-0).

**Report of Conflicts Committee including discussion and possible amendment to the staff opinion issued to Cherry County Commissioner Jim Van Winkle** – Executive Director Daley explained that the recipient of a staff opinion requested that the opinion be reviewed. The members of the Conflicts Committee suggested amending the Open Session Agenda in order to accommodate the request for review.

Daley indicated that this situation involves a group that is attempting to develop a wind farm in Cherry County. Mr. Daley noted that the proposed project has generated strong opinion on both sides. Since last May there have been a number of inquiries regarding conflicts of interests. Daley stated that the Cherry County Planning and Zoning Commission considered a request for a special use permit by a group seeking to establish a wind energy operation. The special use permit application is now before the county board for approval or disapproval. Jim Van Winkle is one of three members of the Cherry County Board. He filed a Conflict of Interest Statement in July. A Commission staff opinion in response to the filing stated that Van Winkle had a conflict of interest and should abstain from participating and voting on the matter. The opinion was based upon Van Winkle's statement that he would receive \$105.00 per year if the project were to proceed. Mr. Van Winkle has taken the position that this is a multi-million dollar project and

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he would receive only \$105 and as such it is de minimis, and that he should be allowed to participate and vote.

The Executive Director noted, however, that if the project were to move forward, an entity known as Cherry County Wind LLC would receive substantial payments. Mr. Van Winkle is a LLC member of Cherry County Wind LLC and therefore has a business association with that entity. There would be a financial effect on Mr. Van Winkle as an individual and on a business with which he is associated.

Discussion followed.

**Motion by Enebach, second by Davis, that the Commission stands by the letter but add a supplement to it discussing the business conflict as well –**  
Roll Call Vote: Commissioners Conway, Davis Enebach, Gale, Hegarty, Loudon, and Peetz voted yes. Motion carried (7-0-0).

**Report of Executive Committee** – Commissioner Conway indicated that there are no issues to report at this time.

**Closed Session - Motion by Loudon, second by Hegarty , that the NADC go into Closed Session pursuant to the confidentiality provisions of the NPADA** - Roll Call Vote: Commissioners Conway, Davis, Enebach, Gale, Hegarty, Loudon and Peetz voted yes. Motion carried (7-0-0).

The NADC went into Closed Session at 9:54 a.m.

The NADC returned to Open Session at 11:17 a.m.

**Action on or Announcement of Closed Session matters** - Executive Director Daley indicated that there were no actions or announcements from Closed Session.

**Adjournment – Motion by Enebach, second by Peetz, that the NADC adjourn.** Roll Call Vote: Commissioners Conway, Davis, Enebach, Gale, Hegarty, Loudon and Peetz voted yes. Motion carried (7-0-0).

Commissioner Conway declared the meeting adjourned at 11:19 a.m.