

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

Friday, January 18, 2013

State Capitol, Room 1525

Lincoln, Nebraska

Call to Order – Vice-Chairman Brostrom 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.

Roll Call –

Kevin Brostrom – Present
Sean Conway - Excused
John Gale – Present
Joseph Grant - Present
Paul Hosford - Excused
Jan Mumm - Present
Richard Nelson – Present
Timothy Schulz – Excused for Late Arrival
Brad von Gillern - Present

Approval of the Open Session Minutes of the December 7, 2012 Meeting – Vice-Chairman Brostrom referred the Commissioners to their copies of the Open Session Minutes of the previous meeting.

Motion by Nelson, second by Mumm, that the Open Session Minutes of the December 7, 2012 meeting be approved as presented - Roll Call Vote: Commissioners Brostrom, Gale, Grant, Mumm, Nelson, and von Gillern voted yes. Motion carried (6-0-0).

Report on Late Filing Fees, including requests for relief - Executive Director Daley indicated that there were no applications for relief.

Executive Director's Report (includes personnel activity, budget status, budget process and litigation status) – Executive Director Daley indicated that the Commission is now 6 months into the current budget year and has expended approximately 39% of its budget and that there is roughly \$900,000 in the CFLA Fund. It was pointed out that the CFLA Fund had gone down since the last report, this was due to an accounting error by the Department of Revenue which

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transferred money into the fund which should have been paid out as tax refunds to taxpayers.

Vice-Chairman Brostrom noted the arrival of Commissioner Schulz at 9:03 a.m.

The Executive Director reported that the electronic filing system for lobbyists and principals is operational. Currently, electronic filing is voluntary, and will not be mandatory until 2016. Approximately 168 lobbyists have filed using the electronic filing system and approximately 400 have filed using the paper filing method.

Executive Director Daley proposed that he register electronically as lobbyist for the purpose of testing the system. It was the consensus of the Commission that this would be appropriate.

The Executive Director indicated that 4th Quarter Reports for lobbyists and principals are due January 30th. The Post General Election Campaign Statements were due on January 15th. Those statements filed are available online for review. Annual Campaign Statements are due January 31st.

Executive Director Daley reported that the Governor's budget proposal provides for an increase in the Commission's General Fund appropriation by about \$46,500. In addition, the Governor is recommending that the approximately \$900,000 CFLA Cash Fund money be transferred to the Secretary of State Election Administration Cash Fund to be used for the maintenance and cost of the Central Voter Database and for voter tabulation equipment. The Executive Director continued that the Governor's budget would reduce the appropriation in the current fiscal year by about \$9,000. It was explained that this amount represents insurance premiums that would not need to be paid by the Commission and would be returned to the General Fund.

Deputy Director Hinman indicated that unexpended General Funds as of June 30, 2013 would carry over to the next fiscal year.

Discussion followed.

Legislative Update – The Executive Director next gave the legislative update.

LB 27 – This is a bill introduced by Senator Hadley. It would change the experience requirements for certified public accountants under the public accountancy act. The Executive Director recommended the Commission support this bill.

LB 79 – A bill introduced by Senator Avery. This bill would repeal the CFLA in its entirety. It would lower the thresholds that trigger the reporting of contributions and expenditures from more than \$250 to \$100 or more. LB 79 would require mandatory electronic filing by 2016, and also require limited liability companies

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(LLCs) and limited liability partnerships (LLPs) to file reports of political contributions. This bill would also clarify that filings are due by 5 P.M. on the date due. The Executive Director recommended that the Commission support LB 79.

Discussion followed.

LB 136 – A bill by Senator Avery. This bill would provide, on an agency by agency basis, for the distribution of administrative penalties assessed by state agencies. Currently, the Commission is not mentioned in this bill, but it could be amended easily. The Executive Director recommended that the Commission monitor this bill.

LB 242 – A bill by Senator Howard that provides for a committee of the Legislature to hold a hearing when a state agency does not have rules or regulations in place within three years of the operative date of the legislation. The bill in its current form does not affect the Commission, but should be monitored as it concerns the Administrative Procedures Act. The Executive Director recommended that the Commission monitor this bill.

LB 294 – A bill by Senator Seiler which creates an additional exception to the prohibition against the use of public resources for campaign purposes. The Executive Director recommended that the Commission oppose this bill as drafted.

LB 98 – This is a bill by Senator Mello that would prohibit state agencies from attempting to enforce a rule or regulation until it has been approved by the Governor and filed with the Secretary of State. It further provides that the State Ombudsman may investigate allegations that a state agency has attempted to enforce rules and regulations prior to final approval. The Executive Director recommended either a position of support or a position of neutral.

Discussion followed.

Motion by von Gillern, second by Mumm, to adopt the recommendations of the Executive Director based on the report of January 17, 2013 and to remain neutral as to LB 98 - Roll Call Vote: Commissioners Brostrom, Grant, Mumm, Schulz and von Gillern voted yes. Commissioner Gale and Commissioner Nelson abstained. Motion carried (5-0-2).

Determination of whether Complaint states cause of action; John Baroni v. John Warsing (12-18) – General Counsel Danberg stated that this matter is being considered in open session at the request of the respondent. The allegation is that the respondent used public resources for campaign purposes. He indicated that this matter stems from a dinner sponsored by Mr. Warsing that was held in the Law Enforcement Building in Plattsmouth Nebraska. The event was an appreciation dinner held for county employees including law enforcement

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personnel. The dinner had been held in prior years. In September, the Commission received a call from Mr. Warsing, asking whether it was permissible to hold the dinner because Mr. Warsing was a candidate for Cass County Commissioner. The Commission advised Mr. Warsing that there was no prohibition, noting that he was a private citizen and it was not intended as a campaign event. Warsing was elected in November, beating incumbent John Baroni. In December a complaint was filed by Mr. Baroni alleging Warsing used public resources for campaign purposes. General Counsel Danberg pointed out that Mr. Warsing was not a public employee or public official at the time the dinner was held. The applicable statute prohibits a public official or public employee from using public resources for campaign purposes. Danberg advised that the complaint was scheduled for dismissal for failure to state a cause of action unless there was an objection from the Commission.

Discussion followed. No objection to dismissal was raised.

Report on Commission late fee process – Executive Director Daley provided a report on the process followed by the Commission and the Commission staff on the matter requests for relief from late filing fees. The report included a description of the statutory criteria for granting relief as well as the good cause shown statute.

Discussion followed.

Report on COGEL Conference – General Counsel Danberg reported that Mr. Frank Daley and he had attended the Council on Governmental Ethics Laws convention held in Columbus Ohio, December 1st thru the 5th. Mr. Danberg noted that on the national level, huge amounts of money are being given by PACs. Some of these contributions are difficult to trace and as such have been given the name of ‘dark money’. Mr. Danberg further reported that despite the Arizona v. Bennett decision which indirectly resulted in a finding by the Nebraska Supreme Court that the CFLA is unconstitutional, there are several states continuing with their commitment to public funding with taxpayer money. The General Counsel also noted that Mr. Frank Daley served as moderator for one of the COGEL seminars.

Report of Conflicts Committee – Commissioner von Gillern indicated that there were no challenges to report.

Report of Executive Committee – Vice-Chairman Brostrom indicated that there are no issues to present at this time.

Closed Session - Motion by Grant, second by Nelson, that the NADC go into Closed Session pursuant to the confidentiality provisions of the NPADA - Roll Call Vote: Commissioners Brostrom, Gale, Grant, Mumm, Nelson, Schulz, and von Gillern voted yes. Motion carried (7-0-0).

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The NADC went into Closed Session at 10:04 a.m.

The NADC returned to Open Session at 10:47 a.m.

Action on or Announcement of Closed Session matters – Executive Director Daley announced that in Closed Session the Commission approved a settlement agreement in case #12-03, Executive Director v. Svoboda for City Council and Ken Svoboda, Candidate. By the terms of the agreement the Commission found that the respondents had violated §49-1462 by failing to file an annual campaign statement. The agreement provided for no civil penalty but acknowledged the payment of late filing fees in the amount of \$1,500.00. The settlement agreement was approved with 7 Commissioners concurring, none dissenting and none abstaining.

Adjournment – Motion by Mumm, second by von Gillern, that the NADC adjourn. Roll Call Vote: Commissioners Brostrom, Gale, Grant, Mumm, Nelson, Schulz, and von Gillern voted yes. Motion carried (7-0-0).

Vice-Chairman Brostrom declared the meeting adjourned at 10:48 a.m.