

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

Friday, September 11, 2015

State Capitol, Room 1525

Lincoln, Nebraska

Call to Order – Chairman Schulz 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 –

Sean Conway – Present
Matthew Enenbach - Present
John Gale – Present
Andrew Loudon - Excused
Jeffrey Peetz - Present
Timothy Schulz - Present
Brad von Gillern – Excused
James Ziebarth - Excused

Introduction and welcome, new Commissioners Matthew Enenbach and Jeffrey Peetz – Executive Director Daley introduced and welcomed new Commissioner Matthew Enenbach from Omaha, and an attorney with Kutak Rock, and new Commissioner Jeffrey Peetz, an attorney in Lincoln with the law firm of Endicott, Peetz & Timmer. The Executive Director and Chairman Schulz both expressed their appreciation to the new Commissioners for their willingness to serve on the Commission.

Approval of the Open Session Minutes of the June 12, 2015 Meeting – Chairman Schulz referred the Commissioners to their copies of the Open Session Minutes of the previous meetings.

Motion by Conway, second by Gale, that the Open Session Minutes of the June 12, 2015 meeting be approved as presented - Roll Call Vote: Commissioners Conway, Enenbach, Gale, Peetz and Schulz voted yes. Motion carried (5-0-0).

Report on late filing fees and requests for relief: Nebraska Realtors PAC – Executive Director Daley explained that this relief request is from the Nebraska Realtors PAC. It was assessed a late filing fee of \$1,100 by operation of law for failure to timely file a Report of Late Contribution. The report was due on March 30th, but the transaction was not disclosed until April 27th. Mr. Daley further explained that late filing fees are \$100 a day for the first ten days and 10% of the amount of the reported late contribution. The Request for Relief was denied by the Executive Director based upon the fact that the committee had been required to pay late filing fees in the two years prior to the date the filing was due.

The Executive Director indicated that representatives from the Nebraska Realtors PAC were present to speak before the Commission.

Rebecca Schultz and Tammy Brookhouser appeared for the Nebraska Realtors PAC and gave a presentation.

Discussion followed. Commissioner Gale recused himself from this relief request by the Nebraska Realtors PAC. There was no action taken and the matter was tabled until the next meeting.

Adoption of draft rules for formal rulemaking purposes and set formal hearing: Title 4, Chapter 6, Rules and Regulations for Lobbying – The Executive Director explained that there are proposed amendments for Commission Rule 6, Rules and Regulations for Lobbying. Daley stated that there are no policy changes included in the proposed amendments. The Legislature enacted a provision that requires lobbyists and principals to file all of their reports electronically beginning January 1, 2015. Currently, Rule 6 refers to paper forms and written reports. The proposed rule reflects the electronic filing requirement. Mr. Daley recommended that the Commission adopt the proposed draft for formal rulemaking purposes and that it set a formal hearing for October 16, 2015.

Discussion followed.

Motion by Gale, second by Enenbach, that the Commission approve the proposed draft for formal rulemaking purposes for Title 4, Chapter 6 Rules and Regulations for Lobbying and to set October 16, 2015 as the date for the formal hearing - Roll Call Vote: Commissioners Conway, Enenbach, Gale, Peetz and Schulz voted yes. Motion carried (5-0-0).

Adoption of draft rules for formal rulemaking purposes and set formal hearing: Title 4, Chapter 10, Rules and Regulations Governing Campaign Practices - Executive Director Daley reported that this is an update of Commission Rule 10. He explained that the Legislature changed certain reporting triggers in the NPADA. Mr. Daley explained by way of example that under prior law a committee was required to form a committee upon spending \$5,000 or more. The Legislature modified the trigger to more than \$5,000. The

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proposed amendments reflect these change. The other proposed change addresses the records retention schedule. Currently political party committees and PACS are required to keep all records for five years after dissolution. Mr. Daley noted that this had become a burden for these political party committees and PACS as they tend to operate indefinitely. Some of them have decades worth of records in storage. The proposed amendments would allow political party committees and PACS to dispose of campaign records ten years after the creation of the record or five years after the dissolution of the committee, whichever comes first. The Executive Director recommended the Commission adopt the proposed draft for formal rulemaking purposes and set a formal hearing for October 16, 2015.

Discussion followed.

Motion by Peetz, second by Gale, that the Commission adopt the proposed draft for formal rulemaking purposes for Title 4, Chapter 10, Rules and Regulations Governing Campaign Practices and to establish October 16, 2015 as the formal hearing date – Roll Call Vote: Commissioners Conway, Enenbach, Gale, Peetz and Schulz voted yes. Motion carried (5-0-0).

Executive Director's Report (includes personnel activity, budget status, budget process and litigation status) – Executive Director Daley announced that Commissioner Timothy Hruza from Grand island had resigned from the Commission. He explained that Mr. Hruza had accepted a job offer in Lincoln and thereby no longer met the residency requirement. His successor will be named by Governor Ricketts. Also, the new Commissioner James Ziebarth from Wilcox was unable to attend today's meeting, but is expected to be present at the next Commission meeting.

Executive Director Daley indicated that 2 months into the current budget year the agency has spent approximately 7% of the agency budget. Mr. Daley referred the Commissioners to their packets for information on the Cash Fund and a review of final budget status for the fiscal year ending June 30, 2015. He noted that during the last fiscal year only 43% of the budget had been spent. Daley stated that this number is artificially low as the agency received \$600,000 for the electronic filing project. Very little money was spent on this project during the last fiscal year.

The Executive Director indicated that the Commission's electronic filing project would be covered later as it is a separate agenda item.

Executive Director Daley announced that this year the Council on Governmental Ethics Laws (COGEL) Conference will be in Boston Massachusetts from December 6th thru December 9th 2015. The Commission is a founding member of COGEL which is an organization that consists primarily of government agencies in the U.S., Canada and other countries and focuses on the administration and enforcement of ethics laws, campaign laws, and lobbying. Mr. Daley indicated

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that the Commission usually sends two staff members. He stated that if any Commissioner is interested in attending, to please contact him.

Discussion followed.

The Executive Director reported that 2nd Quarter Lobbying and Principal Reports that were due on July 30th are available on the Commission website.

Executive Director Daley indicated that on matters of litigation, he would defer to General Counsel Danberg.

General Counsel Danberg reported that in the matter of Scott Japp, the case is back in District Court after an extensive delay that resulted from a discovery issue. Mr. Danberg indicated that depositions have been conducted and that the Commission staff is now proceeding with its Preliminary Investigation.

Report of Settlement Agreement in NADC v. Skinner and NADC v. Tlustos – General Counsel Danberg reported that in the cases of Rolland Skinner (10-15) and Les Tlustos (10-16) a final settlement agreement has been reached. By the terms of the agreement each of the respondents will pay a civil penalty of \$1,500.00 and the order of the Commission finding a violation will become final. The original order provided for a civil penalty of \$2,000 each. In return the respondents forego their right to appeal the latest order of the District Court of Lincoln County.

Discussion followed.

Motion by Gale, second by Conway, that the Commission ratify the settlement agreement that has been approved by the Executive Committee of the Commission in the settlement of the cases of Skinner and Tlustos case #10-15 and case #10-16 – Roll Call Vote: Commissioners Conway, Enenbach, Gale, Pertz and Schulz voted yes. Motion carried (5-0-0).

Report on Electronic Filing Project – The Executive Director indicated that in 2012 the Nebraska Supreme Court found that the Campaign Finance Limitation Act (CFLA) was unconstitutional. Under the CFLA the Commission would award public funds to qualifying candidates for use in their campaigns. After the Supreme Court's ruling the Legislature concluded that part of the CFLA money would go to the Secretary of State's Office Election Administration Fund and the other portion of money would go to the NADC Cash Fund for the purpose of developing a comprehensive electronic filing system. Mr. Daley explained that limited electronic filing of campaign finance related reports have been an option since 2008. However, this still left a significant number of reports to be filed on paper and manually entered into the database. Mr. Daley submitted a written report and described the following stages of the project: a) Assessment of Needs; b) Consultation with the CIO and Development of Specs; c) Posting of

the Request for Proposal; d) the evaluation process; and e) the award of contract. At the end of this process the contract was awarded to Quest Information Systems of Indiana. The goal is to have the system up and running by the 2016 general elections.

Discussion followed.

Consideration of policy for modifying the filing requirements of §49-1493 – Executive Director Daley reminded the Commissioners that two individuals came before the Commission at the January meeting concerned about their obligation to file their Statement of Financial Interests. One had been a victim of domestic abuse and the other individual a victim of identity theft. Both had taken significant steps to protect themselves. They asked the Commission to modify the filing requirements such that they did not have to disclose publically certain information. The Commission granted the modification requests, but determined that there needed to be standards for the purpose of addressing similar requests in the future. The staff submitted a proposed policy in June. The Commission directed that certain changes be made to the proposed policy. The changes to the proposed standards are as follows:

Paragraph One- The current language is, “The filer can demonstrate a reasonable basis”. The new language reads, “The filer provides evidence of a reasonable basis”.

Paragraph Two- The current language is, “The filer can demonstrate a reasonable basis”. The new language reads, “The filer provides evidence of a reasonable basis”.

The Executive Director noted the addition of a Paragraph Six. The new paragraph reads, “The Commission may require the filer to appear before the Commission.”

Discussion followed.

Motion by Gale, second by Enenbach, - to adopt the modification of filing requirements as to Statements of Financial Interests as has been reported by the Executive Director – Roll Call Vote: Commissioners Conway, Enenbach, Gale, Peetz and Schulz voted yes. Motion carried (5-0-0).

Report of Conflicts Committee – Commissioner Conway indicated that there was nothing to report.

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

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Closed Session - Motion by Conway, second by Enenbach, that the NADC go into Closed Session pursuant to the confidentiality provisions of the NPADA - Roll Call Vote: Commissioners Conway, Enenbach, Gale, Peetz and Schulz voted yes. Motion carried (5-0-0).

The NADC went into Closed Session at 10:07 a.m.

The NADC returned to Open Session at 11:50 a.m.

Action on or Announcement of Closed Session matters - Executive Director Daley indicated in the matter of Rick Freshman case #15-04 the Commission approved a settlement agreement with five Commissioners concurring, none dissenting, and none abstaining. The Commission found there was a violation of the NPADA §49-14,103.01(5)(b) and assessed a civil penalty of \$500.

Adjournment – Motion by Conway, second by Enenbach, that the NADC adjourn. Roll Call Vote: Commissioners Conway, Enenbach, Gale, Peetz and Schulz voted yes. Motion carried (5-0-0).

Chairman Schulz declared the meeting adjourned at 10:45 p.m.