

OPEN SESSION
MINUTES OF THE MEETING OF THE
NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION
Friday, September 13, 2013
State Capitol, Room 1524
Lincoln, Nebraska

Call to Order – Chairman Hosford called the meeting to order at 9:06 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 - Present
John Gale – Excused
Joseph Grant - Present
Paul Hosford – Present
Andrew Loudon - Present
Jan Mumm - Present
Timothy Schulz - Present
Brad von Gillern - Present

Introduction of Commissioner Andrew Loudon – Executive Director Daley welcomed new Commissioner Andrew Loudon. Commissioner Loudon is a partner in the Lincoln law firm of Baylor Evnen, where he specializes in wills, trusts and business planning succession. Mr. Loudon is active in a number of community organizations which include the Cornhusker Council of the Boy Scouts of America and the Downtown Rotary Club. Mr. Loudon originally hails from Newcastle Pennsylvania, although Lincoln Nebraska has been home since childhood.

Approval of the Open Session Minutes of the June 7, 2013 Meeting - Chairman Hosford referred the Commissioners to their copies of the Open Session Minutes of the previous meeting.

Motion by Brostrom, second by Mumm, that the Open Session Minutes of the June 7, 2013 meeting be approved as presented - Roll Call Vote: Commissioners Brostrom, Conway, Grant, Hosford, Loudon and Mumm voted yes. Commissioners Schulz and von Gillern abstained. Motion carried (6-0-2).

Report on Late Filing Fees, including requests for relief – Jean Stothert for Omaha – Executive Director Daley indicated that the matter is a request for relief from late filing fees from Jean Stothert for Omaha and that Mr. Ryan Horn was present to represent the committee. Late filing fees in the amount of \$2,451.98 were assessed as result of the late filing of a Report of Late Contribution. The late contribution was an in-kind contribution from the Douglas County Republican Party valued at \$14,519.00. A request for relief was submitted to the Commission. This request was denied by the Executive Director based upon the fact the filing reflected more than \$5,000 in receipts and expenditures and that the committee had been required to pay late filing fees within the last two years. Therefore, the request did not meet the statutory criteria for granting relief.

Ryan Horn appeared for Jean Stothert for Omaha Committee and addressed the Commission concerning the request for relief from late filing fees. He disputed the value of the late contribution and expressed his belief that the contribution should be valued at about \$3,000. He also noted that the fact of the contribution was unknown to the Stothert Committee until well after the reporting deadline and the committee reported it promptly upon being informed of it.

Discussion followed.

Motion by Brostrom, second by Conway, that the Commission grant relief to the Jean Stothert for Omaha Committee and not impose the late fee, under the Good Cause Shown statute - Roll Call Vote: Commissioners Brostrom, Conway, Hosford, Loudon, Mumm, and Schulz voted yes. Commissioner Grant voted no. Commissioner von Gillern abstained. Motion carried (6-1-1).

Report on late filing fees and requests for relief: Douglas County Republican Party – Executive Director Daley indicated that this is a request for relief from a late filing fee of \$2,000 resulting from a Report of Late Contribution filed by the Douglas County Republican Party. The late contribution was a \$10,000 contribution from Michael Simmonds. This request for relief from late filing fees was denied as the filer had been required to pay late filing fees within the past two years, and that the filing reflected over \$5,000 in receipts.

Bryan Baumgart, Chairman of the Douglas County Republican Party and Jason Johanns, Treasurer gave a presentation in support of the request for relief.

Discussion followed.

Motion by von Gillern, second by Brostrom, to deny relief from late filing fees for the Douglas County Republican Party - Roll Call Vote: Commissioners Brostrom, Conway, Grant, Hosford, Loudon, Mumm, Schulz, and von Gillern voted yes. Motion carried (8-0-0).

Report on late filing fees and request for relief in re: Douglas County Republican Party – Executive Director Daley indicated that Douglas County Republican Party asked the Commission to consider a second request for relief from late filing fees that was previously denied. The Douglas County Republican Party had been required to file a Post Primary Statement on June 25, 2012. The statement was not filed until August 15, 2012. A late filing fee of \$750 was assessed. The request for relief was denied as the report reflected more than \$5,000 in receipts and expenditures. Executive Director Daley introduced Scott Peterson, the former Chairman of the Douglas County Republican Party.

Scott Peterson gave a presentation in support of the request for relief.

Discussion followed.

Chairman Hosford asked the Commission to table the matter for the next meeting. There was no dissent.

The NADC recessed at 10:45 a.m.

The NADC returned at 11:00 a.m.

Action relating to proposal to amend Title 4, Chapter 10 Rules and Regulations Governing campaign practices under the Nebraska Political Accountability and Disclosure Act and the Campaign Finance Limitation Act – Executive Director Daley reminded the Commission that the 2013 Legislature passed LB 79 which repealed the Campaign Finance Limitation Act. With the repeal, Commission Rule 10 became inconsistent with state law. The Executive Director explained that this proposal would strike the references to the CFLA. It would also clarify when required filings are due. Under the proposal, filings would be considered timely filed if they were received by 11:59 p.m. on the date due and that the manner of filing provided the Commission staff with a means to verify date and time of filing. By way of example, fax, E-mail, and electronic filings normally include some type of time and date stamp. The proposal would also provide for the release of bonds posted by ballot question committees. Mr. Daley explained that ballot question committees are required to post bonds once they reach \$100,000 in contributions and expenditures. The bonds are intended to insure that any late filing fees or civil penalties owed by the committee are paid to the Commission. Currently, there is no provision to allow release of these bonds unless the committee dissolves. By the proposal a ballot question committee would apply to the Commission for the release of the bond. If the Commission determined that all filings had been made and no late filing fees or civil penalties are due, the bond would be released.

The Executive Director submitted amendments to the proposal. He asked the Commission to adopt this draft with amendments as its draft for formal rulemaking purposes and to set a formal rules hearing for October 25, 2013.

- a) **Adoption of draft proposal for formal lawmaking purposes**
- b) **Set time and date of formal rulemaking**

Discussion followed.

Chairman Hosford invited public comment. He noted for the record that there were no comments from the public.

Motion by Grant, second by Conway, to adopt the proposed draft of Rule 10 with amendments for formal rulemaking purposes - Roll Call Vote: Commissioners Brostrom, Conway, Grant, Hosford, Loudon, Mumm, Schulz and von Gillern voted yes. Motion carried (8-0-0).

Motion by Brostrom, second by Grant, to set the formal rules hearing for October 25, 2013 at 9:00 a.m. – Roll Call Vote: Commissioners Brostrom, Conway, Grant, Hosford, Loudon, Mumm, Schulz, and von Gillern voted yes. Motion carried (8-0-0).

Executive Director's Report (includes personnel activity, budget status, budget process and litigation status) – Executive Director Daley reported on the budget, and stated that two months into the fiscal year approximately 8% has been expended. The Executive Director reported to the Commission that LB 79 transferred money from the CFLA Fund to the NADC Cash Fund and to the Election Administration of the Secretary of State.

Executive Director Daley reported that he will continue to file reports as a lobbyist in order to test the electronic filing system. He stated that currently the system notifies the agency by e-mail of a late filing and calculates the late fee. He stated he will purposely file the next report late in order to test the system from the perspective of the lobbyist.

The Executive Director next reported on the new electronic campaign finance reporting system which is being developed pursuant to LB 79. The agency is working with the Materiel Division and the Chief Information Officer on this project. It was explained that because of the cost involved, the Materiel Division functions as procurement office for contracts of this size. The CIO office is involved because of the technology. Daley noted an issue with the development of the specs for the contract. For the purpose of developing formal specs the Commission needs the assistance of an IT person. However, an IT person would need to become familiar with the concepts of campaign finance reporting. An alternative would be for the Commission to hire an IT consultant who is familiar with campaign filing concepts and would develop the formal contract

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specifications. The consultant would also assist in the scoring of the proposals. The Office of the CIO is willing to undertake the spec development, but agrees that the procurement of an outside consultant who can do both would be a worthwhile approach.

Executive Director Daley announced the NADC website now features Election Report Summaries. They were developed by Staff Auditor David Hunter. The reports are summaries of receipts and expenditures by candidates for the 2010, 2011, 2012 and 2013 elections. The reports list names of all the candidates, list how much money was taken in, and how much money was spent. The summaries also include a direct link to the filings of the candidates. This new addition to the agency website should prove to be a useful tool for a variety of people, including, candidates, committees, the press, the public and academics.

Chairman Hosford took the opportunity to compliment Staff Auditor David Hunter on behalf of the Commission for his work.

General Counsel Danberg indicated that the Skinner v. Tlustos cases involved two individuals who the Commission found in violation of the statute which prohibits public employees from spending public money for campaign purposes. An appeal to the District Court in North Platte resulted in a reversal of the Commission's decision. The Commission appealed the District Court's ruling. The General Counsel indicated that the matter is now before the Nebraska Supreme Court. Mr. Danberg has been appointed Special Assistant Attorney General for the purpose of briefing and arguing the appeal. On July 19th a brief was filed by the Commission. The briefs of the appellees and intervenors will be due later in the month.

Discussion followed.

Adoption of Agency Workplace Violence and Workplace Harassment Policies - The Executive Director stated that he attended a series of seminars put on by the state concerning workplace policies on harassment and violence. It was noted that the State seemed to have a vague policy on workplace harassment. The policy encouraged each individual agency to develop its own system for reporting workplace harassment and workplace violence. Executive Director Daley asked the Commission to adopt the proposed Workplace Policy for Harassment and adopt the proposed Workplace Policy for Violence.

Discussion followed.

Motion by Conway, second by von Gillern, to adopt the Workplace Violence and Workplace Harassment policies - Roll Call Vote: Commissioners Brostrom, Conway, Grant, Hosford, Loudon, Mumm, Schulz, and von Gillern voted yes. Motion carried (8-0-0).

Discussion of June action on the salaries of General Counsel, Deputy Director – Executive Director Daley reported at the last meeting the Commission had ordered 5% raises for the Deputy Director and General Counsel. However, the Commission staff was advised by the Personnel Division that the Commission did not have the authority to order a 5% raise. That only a raise of 2.25% was allowable for State employees. This did not affect the 5% raise granted to Executive Director Daley. Daley expressed his disagreement with the Personnel Division. He noted, however, there was not a viable means of addressing this disagreement. He noted that this was brought before the Commission for informational purposes and not for action by the Commission

Discussion Followed.

Consideration of reduction of salary of Executive Director – The Executive Director asked the Commission to reduce his salary by 2.75% as of September 23, 2013. Noting that it would be inappropriate for him to accept the 5% raise granted by the Commission in June. By this reduction Daley said he would receive the same increase of 2.25% that the other staff members received.

Discussion followed.

Motion by Schulz, second by Conway, to reduce the Executive Director's salary by 2.75% effective September 23, 2013 – Roll Call Vote: Commissioners Brostrom, Conway, Grant, Hosford, Loudon, Mumm, Schulz and von Gillern voted yes. Motion carried (8-0-0).

Report of Conflicts Committee – Commissioner von Gillern indicated that there were 15 Potential Conflict of Interest Statements received. And there appeared to be nothing of significance to be raised before the Commission.

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

Closed Session - Motion by Brostrom, second by Grant, that the NADC go into Closed Session pursuant to the confidentiality provisions of the NPADA - Roll Call Vote: Commissioners Brostrom, Conway, Grant, Hosford, Loudon, Mumm, Schulz and von Gillern voted yes. Motion carried (8-0-0).

The NADC went into Closed Session at 11:26 a.m.

The NADC returned to Open Session at 11:54 a.m.

Action on or Announcement of Closed Session matters - Executive Director Daley indicated that there were two matters to report. In the matter of Richard Quick, case 12-05, the Commission approved a settlement agreement by which there was a finding of a violation of §49-14,103.01. A civil penalty of \$100 was

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assessed. The settlement agreement was approved with 8 commissioners concurring, none dissenting and none abstaining. In the matter of Alisha Bartling, case 13-06, the Commission approved a settlement agreement by which there was a finding against the respondent of four violations of §49-14,101.01(1) and one violation of §49-14,101.01(2). A civil penalty of \$6,000 was assessed. The settlement agreement was approved with 8 commissioners concurring, none dissenting, and none abstaining.

Adjournment – Motion by Schulz, second by von Gillern that the NADC adjourn. Roll Call Vote: Commissioners Brostrom, Conway, Grant, Hosford, Loudon, Mumm, Schulz and von Gillern voted yes. Motion carried (8-0-0).

Chairman Hosford declared the meeting adjourned at 11:55 a.m.