



TEXAS ETHICS COMMISSION
WORKSHOP ON FILING AND ENFORCEMENT
MEETING MINUTES
January 17, 2012, 10:02 a.m.
Capitol Extension, Room E1.010, Austin, Texas 78701



COMMISSIONERS PRESENT: Hugh C. Akin, Jim Clancy, Tom Harrison, Paul W. Hobby, Bob Long, Paula M. Mendoza, Tom Ramsay, and Chase Untermeyer.

COMMISSIONERS ABSENT: None.

STAFF PRESENT: Natalia L. Ashley, Amy Barden, Margie Castellanos, Jessie Haug, David A. Reisman, Tim Sorrells, and Mary Young.

MINUTES

This meeting was recorded. These minutes are a summary record of the Commission's actions at the meeting. For a detailed record of discussions and statements made by persons speaking at the meeting, please consult the audio recordings on file at the Commission's office.

Agenda Item 1: Call to order: roll call.

The meeting was called to order by Commissioner Harrison. David A. Reisman, Executive Director, called the roll. All Commissioners were present.

Agenda Item 2: Introduction and comments by the Chair.

Commissioner Harrison introduced the new commissioner, Hugh C. Akin from Dallas.

Agenda Item 3: Comments from the public.

None.

Agenda Item 4: Comments by the commissioners.

Commissioner Harrison stated that in a meeting with the Sunset Advisory Commission staff, he stated that one of his concerns had been that the public has been hesitant to speak to the Commission, both the regulated community and the people that watch the regulated community.

Commissioner Ramsay asked if the Commission could invite the Chair and other members of the Sunset Advisory Commission to meet with the Ethics Commission.

Commissioner Hobby asked if we could also include the Sunset Advisory Commission staff.

Commissioner Untermeyer stated that he hoped that from today's session would come a consensus from the Ethics Commission that they could take to the Sunset Advisory Commission.

Commissioner Harrison discussed some of his comments that he made to the Sunset Advisory Commission staff regarding the creation of the Ethics Commission.

Commissioner Hobby stated his concerns with the personal financial statement. He also stated that the focus should be on disclosure and to encourage public service.

Commissioner Clancy stated that during Commission meetings more time should be spent on improvements, such as reducing the number of late-filing reports, improving guidelines regarding personal use, reporting in-kind contributions, candidate PAC coordination, customer support, technical support, and making communication easier with the Commission. He discussed developing statutory recommendations regarding checkbook reporting, reducing the number of filing deadlines, creating a category of violations for reporting violations only, and improving the review process of reports to measure and improve compliance. Commissioner Clancy also discussed the necessity of simplifying the completion of the personal financial statement.

Agenda Item 5: Discussion and possible action on the number of reporting deadlines.

David A. Reisman, Executive Director, presented this agenda item. He discussed the personnel comparison with budget expenditures from FY2002 through FY2012. Mr. Reisman stated that over that 10 year period the Commission has been spending less money.

Mr. Reisman discussed the proposed Rolling Reporting System for campaign finance and lobby reporting. The use of this system would eliminate filing deadlines and increase transparency. Filers would be able to log into their account and report transactions anytime. Filers would also be able to see their transactions and balances on the campaign finance reporting statement. Each transaction would be instantly posted for on-line public viewing.

Mr. Reisman then discussed the late reporting process in the proposed Rolling Reporting System. He stated that if a transaction is reported late, the item would be automatically "red flagged" on the website. There would be an automated review of the accounts. Fine or warning letters would be automatically generated and sent by e-mail. Filers would be able to correct information that was erroneously reported.

Mr. Reisman discussed the benefits of the Rolling Reporting System, such as greater transparency, no reporting deadlines, greater reporting flexibility, simple to understand, and an automated warning/fines system.

Commissioner Untermeyer asked if the reporting system would require legislative changes.

Mr. Reisman stated that some changes would require legislation as to filing deadlines, since they are statutory. He also stated that the 8-day pre-election reporting requirement would stay the same.

Commissioner Clancy asked if Mr. Reisman saw any objections to the system.

Mr. Reisman stated that transparency might scare some, but that the system would be beneficial.

Commissioner Ramsay asked if there were any other benefits.

Mr. Reisman stated that local filing authorities could more easily develop the system to benefit local filers.

Agenda Item 6: Discussion and possible action on the assessment of fines for late and corrected reports.

David A. Reisman, Executive Director, presented this agenda item. He discussed the condensed version of the guidelines for handling late reports and the summary of the late and corrected report violations in FY2010. Mr. Reisman stated that out of a total of 1,339 late reports filed in FY2010, 865 were either waived or the fines were reduced. He stated that if the Commission would like to create guidelines, they could start with the current guidelines used for staff recommendations.

Commissioner Untermeyer asked for clarification of certain abbreviations on the summary of late and corrected report violations. He also asked if some new funding could be provided to the Commission that is not appropriated funds by possibly charging a handling fee. He further asked if that could be proposed to the legislature.

Commissioner Harrison asked if any time there is a violation, a charge or handling fee could be assessed.

Commissioner Clancy suggested a \$50 filing fee for those filing late reports.

Commissioner Harrison asked if there was a filing fee for lobbyists.

Mr. Reisman stated that there was a filing fee for lobbyists, but that it goes directly to the general revenue.

Commissioner Clancy stated that the Commission could possibly create another category for reduced late-filing penalties for the type of filer who is an unpaid member of a board in order to lower a penalty that has already been reduced to \$250.

Mr. Reisman stated that the Commission could use their discretion and could reduce the \$250 late-filing penalty to \$100.

Natalia Luna Ashley, General Counsel, stated that it could be done with a Commission rule and that the Commission could provide guidelines for staff to follow.

Commissioner Harrison asked if the guidelines prepared by staff are by rule or informal.

Amy S. Barden, Senior Legal Assistant, stated that the staff recommendation guidelines are based on prior decisions of the Commission.

Ms. Ashley stated that to consider a rule-making process the Commission could start with these guidelines and define the parameters.

Commissioner Clancy stated that the Commission could set a process by which the first late report is waived, the second late report would be assessed \$100, the next would be \$250, etc. Those late reports that now come before the Commission would in the future be handled by staff.

Ms. Ashley stated that by rule a late filer may appeal the decision if they do not agree with it.

Commissioner Harrison asked if late filers know what the staff recommendation is before the meeting.

Ms. Ashley stated that in instances when staff recommendations are waived, staff does let them know of the recommendation, and if a filer calls they are told what the staff recommendation is.

Ms. Barden stated that the only time that the meeting notice states the staff recommendation is for corrected reports in the instance of substantial compliance.

Commissioner Untermeyer asked about the high percentage of late filing of personal financial statements (PFS).

Mr. Reisman stated that there is a large number of requests for sick waivers (administrative waiver) regarding PFS's, considering that the filer can also request a two-month extension.

Commissioner Clancy stated that the next step for a modified version of the rule should be something that addresses reduction of the late-filing penalty that is within the authority of the executive director.

Ms. Ashley stated that staff will draft an amendment to the rules with the understanding that it is just a starting point. She further stated that depending on what else is on the February 8, 2012, Commission meeting agenda, the matter would possibly be presented at the April 2012 Commission meeting.

Commissioner Clancy stated that if the Commission does not agree with a staff recommendation, the Commission could make a different determination, and then the staff recommendation would change accordingly. He also stated that the executive director needs more discretion in determining the amount of the fine.

Ms. Ashley stated that staff would take the rule and try to add some of the guidelines to allow the executive director more discretion for reduction of the late-filing penalty.

Commission Clancy stated that the Commission should give staff more flexibility to bring those filers that wish to address the Commission, and handle the rest administratively.

Agenda Item 7: Discussion and possible action on recommendations to the Sunset Advisory Commission.

Craig McDonald, Executive Director, Texans for Public Justice, spoke before the Commission. He suggested a structural change in the Commission. The Commission can be more effective by creating an enforcement officer position that would take enforcement matters outside the bounds of the Commission with outside subpoena power. Mr. McDonald also stated that the Commission needed to reform the personal financial statement. He stated that the report should be put on-line automatically; the reports should be searchable; categories changed (possibly model after the federal form), and include more detail in stock transactions. Mr. McDonald further stated that the automatic sick waiver should be addressed and altered, and the gift disclosure needed to be changed. He also stated that more lobby information should be disclosed, possibly model after the federal disclosure. Mr. McDonald stated that the revolving door statute needed to be broadened. He also stated that he would look favorably at the proposed Rolling Reporting System presented by the executive director.

Jack Gullahorn, Professional Advocacy of Association of Texas, spoke before the Commission. He stated that he was interested in the Rolling Reporting System presented by Mr. Reisman, that it could work well with the lobby community. Mr. Gullahorn discussed three items of concern within the lobby community. The first item was the funding issue and the possibility for others to join the lobbyists in paying to support the cost to the Commission. The second item dealt with the issue of greater clarity regarding procurement activities and the need to increase the number of those that should register as a lobbyist. The third item was to give staff more flexibility in dismissing complaints.

Karl Spock, staff of the Sunset Advisory Commission, spoke to the Commission. He stated that the comments his staff heard today at the workshop were valuable and that they would take them into consideration. Mr. Spock stated the Sunset Advisory Commission report would come out March 8th or 9th. The Ethics Commission would have two weeks to comment.

David A. Reisman, Executive Director, stated that he would notify the Commission about Sunset Advisory Commission meetings or hearings.

Commissioner Hobby asked if the Commission could see what requires legislative change versus rule change regarding Commissioner Clancy's recommendations discussed in Agenda Item 4.

Commissioner Clancy requested that the executive director explain the concept of a hearing officer in the sworn complaint process.

Mr. Reisman stated that the duties would be similar to those of a hearing officer with the State Office of Administrative Hearings (SOAH). He stated that one concept would be that staff investigate the complaint and then bring it to the hearing officer. The hearing officer would then make the decision instead of the Commission. A policy decision or statutory provision would have to be in place if a person wanted to appeal the decision of the hearing officer and come before the Commission.

Commissioner Clancy discussed his concerns with the stigma of a sworn complaint and suggested a two tier system of violations, one that deals with reporting violations and the other with ethics violations.

Mr. Reisman stated a more streamlined track could be created.

Commissioner Long stated that the purpose of the Commission is to handle financial filing. He also stated that the Commission should present to the public that the Commission is not checking morals, but filings.

Commissioner Harrison stated that the focus of the Commission is disclosure, disclosure of financial reports, and not conduct.

Commissioner Hobby stated that the statute creating the Ethics Commission would not have passed if the Commission had been called the Texas Disclosure Commission.

Commissioner Untermeyer stated that if the Commission were freed of administrative burdens then it could be more proactive. He further stated that the Commission could conduct open hearings around the state or here in Austin and inquire about ethics in regard to personal use or campaign techniques.

Commissioner Ramsay asked if the Commission was created because of a moral issue.

Commissioner Hobby stated that the Commission was created because of a campaign promise by Governor Bullock.

Commissioner Ramsay stated that it was a moral issue in that it was right or wrong. He further stated that without motivation of having a stigma to it, there would be a lot less reporting than there is now.

Commissioner Hobby stated that maybe we could reward people for good behavior.

Commissioner Clancy stated that there should be a push for an increase in bookkeeping standards, authorize a lower level of reporting but also allow a deeper level of review or investigation.

Commissioner Hobby asked if there was any place where the Commission is legislatively instructed to create a safe harbor.

Ms. Ashley stated that the legislature is not required to do that, but that the Commission has done that in some instances. For example, the Commission has the authority to issue advisory opinions that do create a defense to prosecution.

Commissioner Harrison stated that Mr. Reisman will let the commissioners know about the Sunset Advisory Commission hearings. He encouraged the commissioners to attend these hearings.

Agenda Item 8: Presentation of the Nominating Committee report regarding the positions of Chair and Vice Chair of the Texas Ethics Commission. Election of Chair and Vice Chair of the Texas Ethics Commission.

Commissioner Mendoza presented this agenda item. She thanked Chair Graham for his service to the Commission. Commissioner Mendoza stated that the nominating committee nominated Commissioner Ramsay for Chair and Commissioner Clancy for Vice Chair. Motion by Commissioner Untermeyer to appoint Commissioner Ramsay as Chair and Commissioner Clancy as Vice Chair; second by Commissioner Hobby. Motion passed by a vote of eight ayes.

Agenda Item 9: Adjourn.

Commission meeting adjourned by unanimous consent at 12:38 p.m.