

Tennessee Ethics Commission
November 24-25, 2008
Minutes

The Tennessee Ethics Commission held a regular meeting on Monday, November 24 and Tuesday, November 25, 2008, in Room 30 of the Legislative Plaza. On Monday, November 24, Chairman Brown and Commissioners Garland, Hall, Knight, Neal, and Purser were present. Chairman Brown called the meeting to order at 1:30 p.m.

Minutes

Commissioner Purser moved to approve the staff's draft minutes. Commissioner Knight offered several amendments, some of which were adopted and some of which were not adopted. After debate, the minutes of the last meeting were unanimously approved as corrected.

Financial Report

Commissioner Garland moved to adopt the financial report. Commissioner Neal made several statements and asked questions as follows: "We make no grants or subsidies, use a specific term," "Under dues and subscriptions you list Westlaw, where do you carry the NY Times and the Wall Street Journal," "Chairman Hall agreed to have the state pay the professional tax for you, David, and Willow. Where is that carried," "Chairman Hall agreed to have the state pay the Board of Professional Responsibility Fee for you, David, and Willow. Where is that carried," "Identify the expenditures in footnote 9," "Identify what you mean by in-service or out-of-service training," and "As an addendum to the next financial report I asked that you attach the register of all civil penalties required by the statute." Commissioner Knight moved to change the category "grants and subsidies" to "training." The motion failed two (2) to four (4), with Commissioners Knight and Neal voting yes. After debate, Commissioner Neal moved to include the names of the publications to which the Commission subscribes in the financial report. The motion failed two (2) to four (4), with Commissioners Knight and Neal voting yes. The motion to adopt the financial report carried four (4) to two (2), with Commissioners Knight and Neal voting no.

Item 5-- Show Cause - Failure to Pay 2008 Registration Fees
Molly Pratt

The Chair announced the Commission would hear from respondents present to participate in informal show cause proceedings. Ms. Molly Pratt addressed the Commission. Commissioner Purser moved to assess a penalty of four hundred fifty dollars (\$450) for each of Ms. Pratt's two (2) failures to timely pay 2008 registration fees, for a total penalty of nine hundred dollars (\$900). The motion carried four (4) to two (2), with Commissioners Knight and Neal voting no.

Executive Director's Report

Commissioner Hall moved to approve the Executive Director's recommendation to hire Mr. Daven Harrell for the position of Ethics Compliance Officer. After debate, the motion carried four (4) to two (2), with Commissioners Knight and Neal voting no.

General Counsel's Report

The General Counsel's report was received. Commissioner Purser moved to place Mike Butler's lobbyist audit report on a future agenda, and to have legal staff present a report on legal enforcement options and recommendations on whether to pursue such options. The motion carried unanimously.

Item 1 – Management Review

The Executive Director’s report on risk assessment, the response to the Comptroller’s audit, the Commission’s sunset hearing, and budget matters were received. Chairman Brown requested the Executive Director develop a methodology for allocating expenditures attributable to lobbyists and employers and report to the Commission regarding the methodology chosen.

*Item 2 – Show Causes— Failure to Pay 2008 Employer of Lobbyist Registration Fees
Tennessee Association of Air Carrier Airports*

After discussion, Commissioner Garland indicated he would not change his vote cast at the Commission’s October meeting in favor of assessing a civil penalty. The Commission declined to vote upon this item.

*Item 5 - Show Causes – Failure to Pay 2008 Employer of Lobbyist Registration Fees
Association for the Preservation of Tennessee Antiquities*

Commissioner Hall moved to assess a four hundred dollar (\$400) penalty for the Association’s failure to pay 2008 registration fees. Commissioner Neal recused herself based on her position with Belle Meade Plantation. After debate, the motion carried five (5) to zero (0), with Commissioner Neal abstaining.

Bad Wolf MMA

Commissioner Knight moved to assess a penalty of seven hundred fifty dollars (\$750). The motion carried unanimously.

Brain Injury Association

Commissioner Purser moved to assess a four hundred dollar (\$400.00) penalty. The motion carried unanimously.

Committee on Compensation and Retirement

Commissioner Garland moved to assess a four hundred dollar (\$400) penalty. The motion carried unanimously.

DAD of TN

After debate, Chairman Brown deferred this item until November 25, 2008.

Public Consulting Group

After debate, Commissioner Knight moved to assess a penalty of four hundred dollars (\$400) for the first violation and two hundred dollars (\$200) for the second violation for a total penalty of six hundred dollars (\$600). After further debate, the motion failed two (2) to four (4), with Commissioners Knight and Neal voting yes. Commissioner Hall moved to assess an eight hundred dollar (\$800.00) penalty. The motion carried four (4) to two (2), with Commissioners Knight and Neal voting no.

Southern Land Company

Commissioner Purser moved to assess a four hundred dollar (\$400) penalty. The motion carried unanimously.

*Item 6 – Show Causes – State Candidates Failure to Timely File Disclosure Statements
Roderic Ford*

After debate, Commissioner Knight moved to dismiss the Commission’s show cause action against Mr. Ford because of his failure to qualify as a candidate. The motion carried unanimously.

Virgil Kidwell

Commissioner Hall moved to assess a one hundred dollar (\$100) penalty. The motion carried unanimously.

Michael Blain Surgenor

After debate, an inaudible Commissioner moved to dismiss the show cause action against Mr. Surgenor as he had filed within five (5) days after receiving notice. The motion carried unanimously.

Jonathan Katisros

Commissioner Hall moved to assess a seven hundred fifty dollar (\$750.00) penalty. The motion carried unanimously.

The meeting adjourned at 5:05 p.m.

On Tuesday November 25, Chairman Brown and Commissioners Garland, Hall, Knight, Neal, and Purser were present. Chairman Brown called the meeting to order at 8:30 a.m.

Item 3 – Proposed Operating Procedures

The Commission received memoranda from Commissioner Neal and General Counsel on proposed operating procedures. After debate, Chairman Brown requested Commissioner Neal and General Counsel Himmelreich meet before the next meeting on December 11, 2008 to discuss operating procedures and create a document reflecting the operating procedure language as to which there was agreement, the language as to which there was disagreement, and the basis therefor.

Item 4 – Publishing of Draft Opinions

The Commission received the remarks of Mr. Courtney Pearre and Mr. Dick Williams. Commissioner Knight moved to continue the Commission's practice of publication of draft advisory opinions prior to Commission discussion and/or issuance of a final opinion. The motion carried five (5) to one (1), with Commissioner Purser voting no.

Item 7 – Remedies for Failure to File: Complaint, Administrative Action, or Both

Commissioner Knight summarized her previously submitted memorandum. Commissioner Knight moved that if a complaint is filed which alleges only late filing, the Commission either dismiss it as being covered by Tenn. Code Ann. §§3-6-205 or 3-6-306 or initiate an administrative action pursuant to those statutes and thus moot the complaint proceeding. The motion failed three (3) to three (3), with Chairman Brown and Commissioners Hall and Garland voting no.

Item 8 – Evaluation of the Executive Director

There was discussion about the fact that the Executive Director had created an evaluation form, which he had filled out himself and placed in the meeting book. Commissioner Purser moved that the Executive Director remove his comments from the form and send each Commissioner a blank version of the form to fill out and submit to the Chairman, after which the Chairman would review the forms and give the results to the Executive Director. The motion carried unanimously.

Item 5 – Show Causes – Failure to Pay 2008 Employer of Lobbyist Registration Fees – Deferred from October meeting

Tony Gottlieb – DAD of Tennessee

Tony Gottlieb, the Executive Director of DAD of Tennessee, addressed the Commission on behalf of

DAD of Tennessee. After debate, Commissioner Purser moved to assess a seven hundred fifty dollar (\$750.00) civil penalty. The motion carried unanimously.

Item A – Motion to Rescind Advisory Opinion No. 07-03

Commissioner Purser moved to rescind Advisory Opinion 07-03. The motion failed two (2) to four (4) with Commissioners Garland and Purser voting yes.

Item 9 – Show Causes – Local Official Failure to File Disclosure Statements – Class 2 Offenses

Tony Boles

Commissioner Purser moved to find that all four (4) named respondents had committed a violation. The motion was amended to address only Mr. Tony Boles, and to impose a civil penalty of nine thousand, two hundred fifty dollars (\$9,250), which was the difference between the maximum permissible civil penalty and the seven hundred fifty dollar (\$750) penalty that had already been imposed. The motion, as amended, carried unanimously.

Marc Harris

Commissioner Purser moved to assess a nine thousand, two hundred fifty dollars (\$9,250) penalty, determined in the manner as the penalty for Mr. Boles, upon Mr. Harris for failing to file a disclosure statement. The motion carried unanimously.

Verlin Short

Commissioner Purser made the same motion as to Mr. Short. The motion carried unanimously.

Wicky Shepard

Commissioner Knight moved to defer action until Commission staff could speak to someone in Mr. Shepard's locality regarding Mr. Shepherd's health. The motion carried unanimously.

Item 10 – Show Causes – Campaign Contributions by Lobbyists

Tony Gottlieb

After hearing from Mr. Gottlieb's attorney, John Jay Hooker, and after debate, Commissioner Knight moved that the Commission file a declaratory judgment action to determine the constitutionality of the Act's ban on campaign contributions by lobbyists. The motion failed two (2) to four (4), with Commissioners Knight and Neal voting yes. Commissioner Hall moved that the Commission find Mr. Gottlieb had violated the Act. The motion was amended to provide that the Commission assess a penalty of four hundred dollars (\$400) for the first violation. The motion carried five (5) to one (1), with Commissioner Knight voting no. Commissioner Hall moved the Commission find Mr. Gottlieb had committed a second violation and assess a two hundred fifty dollar (\$250) penalty. The motion carried five (5) to one (1), with Commissioner Knight voting no.

Barbara Snyder

After debate, Chairman Brown moved to find a violation of the campaign contribution ban provision but assess no penalty. The motion failed three (3) to three (3), with Commissioners Neal, Purser, and Knight voting no. Commissioner Knight moved to find no penalty without addressing the issue of violation. There was no vote on this motion. Commissioner Purser moved to find a violation of the campaign contribution ban provision and assess a fifty dollar (\$50) penalty. The motion carried four (4) to two (2), with Commissioners Knight and Neal voting no.

Tommy Thompson

Commissioner Garland moved to find a violation and assess a penalty of five hundred dollars (\$500). The motion carried five (5) to one (1), with Commissioner Knight voting no.

Item 11- Public Records Rules, 0580-02

After discussion, Chairman Brown moved to adopt the staff's proposed revision of Rules 0580-02-.04 to conform to the Office of Open Records' Schedule of Reasonable Charges for Copies of Public Requests. The motion was amended to change "of" to "after" in Rules 0580-02-.03 subparagraphs (2) and (4). The motion, as amended, carried unanimously. Chairman Brown moved to adopt the staff's proposed amendment of Rules 0580-02-.03(4) to conform to the Office of Open Records' response form. The motion carried unanimously. Commissioner Neal moved to adopt the staff's proposed amendment to Rules 0580-02-.03(5) to conform to the Office of Open Records' response form. The motion carried unanimously.

Item 12 – Complaint Proceedings Rules, 0580-03

Commissioner Hall moved to adopt the staff's recommendation to delete Rule 0580-03-.04(1)(a). The motion carried unanimously. Chairman Brown deferred further proceedings with regard to this item to a future meeting.

Future Meetings

Commissioner Neal moved that the fourth Tuesday in January be set for a public meeting and that if there is not a physical quorum, the meeting be held by teleconference. Chairman Brown stated that January 27, 2009 at 8:30 a.m. would be tentatively set as the Commission's first meeting date of 2009.

Concluding Remarks

Commissioners Garland, Hall, and Purser were thanked for their service.

The meeting adjourned at 2:18 p.m.

Approved: March 3, 2009 W.E.P.