

Tennessee Ethics Commission
June 3, 2009
Minutes

The Tennessee Ethics Commission met on Wednesday, June 3, 2009, at 8:30 a.m. at the Tennessee State Library and Archives. Chairman R. Larry Brown and Commissioners Charles H. Farmer, Nathaniel S. Goggans, John K. King, Linda W. Knight, and Dianne F. Neal were present. Chairman Brown called the meeting to order at 8:43.

May 18, 2009 Minutes

After discussion, Commissioner Knight moved to approve the minutes. After the motion was seconded, Commissioner Knight offered a correction. After discussion, the minutes, as corrected, were unanimously approved.

Item 3 – Operating Procedures – Final Draft

After discussion, Commissioner Neal moved that the Commission adopt the final operating procedures. The motion was seconded, and, after discussion, the operating procedures were unanimously approved.

Item 1 – Discussion of Sunset/Merger Implications

This item was discussed, but no motions were made.

Item 6 – Rules 0580-04 (Penalty Assessment Procedures for Late Filing and Failure to File Pursuant to Tenn. Code Ann. § 3-6-205)

After discussion, Commissioner Knight moved to adopt Rules 0580-04 containing her revisions. The motion was seconded, and Commissioner Knight detailed her revisions, questions and items for discussion. After discussion and additional revisions, Rules 0580-04, as revised, were unanimously approved.

Item 7 – Rules 0580-03 (Complaint Proceedings)

After discussion, Commissioner Knight moved to approve Rules 0580-03 containing her revisions. The motion was seconded and Commissioner Knight detailed her revisions, questions and items for discussion. After discussion, Commissioner Knight offered an amendment to the motion to delete the word “manner” at 0580-03-.03(7)(a) and to add a subsection (7) at 0580-03-.04 which would state “to the extent applicable, this chapter governs complaints initiated by the Commission pursuant to Tenn. Code Ann. § 3-6-201(d).” After discussion, Commissioner King moved to adopt Rules 0580-03 as amended. The motion was seconded and Rules 0580-03, as amended, were unanimously approved.

Item 8 – Formation of Audit Committee(s)

After discussion, Chairman Brown moved to defer this item to a future meeting. The motion was seconded, and, after discussion, the motion passed unanimously.

Staff Reports

The staff had reported in conjunction with discussions of other items, particularly Item 1. After discussion, Chairman Brown directed staff to defer further reports to a future meeting.

Item 12 – Conflict of Interest Policy

After discussion, the Commission determined to defer discussion of this item to a future meeting.

Item 17 – Rules 0580-06 (Rules Pertaining to Filing Disclosure of Interest Statements)

After discussion, Commissioner Farmer moved to approve Rules 0580-06 as revised by Commissioner Knight. The motion was seconded. After discussion, the motion to approve Rules 0580-06 as amended by Commissioner Knight passed unanimously.

Item 14 – Review of Informal Response 09-09

Commissioner Knight brought this item to the agenda pursuant to T.C.A. § 3-6-117(b)(7), because she believed that Informal Response 09-09 was incorrect. Informal Response 09-09 stated that an official in the executive branch could not attend a reception hosted by an employer of a lobbyist during the inauguration of President Obama, on the ground that the official had been invited because he or she was a state official and therefore the gift exception of T.C.A. § 3-6-305(b)(1) could not apply. After discussion, Commissioner Goggans moved to withdraw Informal Response 09-09 as there were insufficient facts upon which to base an informal response. The motion was seconded and passed unanimously. Commissioner Knight stated for the record that she concurred in the outcome, but based her vote on her opinion that the fact that someone would be included in an event or would receive a benefit because he or she is a state official does not preclude the application of T.C.A. § 3-6-305(b)(1) as an exception to the general gift ban.

Item 16 – Review of Informal Response 09-71

Commissioner Knight brought this item to the agenda pursuant to T.C.A. § 3-6-117(b)(7) because she believed that Informal Response 09-71 was incorrect. Informal Response 09-71 stated that a lobbyist is allowed to serve as a campaign treasurer for a candidate for the General Assembly, but that it was unclear whether his or her activities as such treasurer would be restricted; and further stated that a lobbyist can solicit campaign contributions for a candidate for the General Assembly. Commissioner Knight referred to Advisory Opinion 07-12 and the governing statutes to conclude that a lobbyist is not prohibited from performing any functions related to being a campaign treasurer. After discussion, Commissioner King moved to modify Informal Response 09-71 to reflect that the caller could serve as treasurer and could also solicit campaign contributions in that capacity. The motion was seconded. After discussion, the motion passed unanimously.

Item 11 – Scope of Official Disclosure Required for Investments

T.C.A. § 8-50-502(2) provides that officials who must file financial disclosures must list investments in any corporation or other business organization in excess of ten thousand dollars (\$10,000) or five percent (5%) of the total capital. The staff's instructions and examples posted on the website have purported to require filers to list many other types of assets. This issue was raised at the March 10, 2009 meeting, at which the staff was instructed to study what investments must be listed. After discussion, the Commission reached consensus that certificates of deposit, bonds, insurance policies, annuities, real estate, interests in estates and trusts, and other assets that are not ownership interests in business entities are not "investments" within the meaning of the Act. After further discussion, the Commission concluded that if a filer's business is a sole proprietorship rather than a separate entity, the filer would need to disclose the income produced under T.C.A. § 8-50-502(1) provided the income threshold was met. After further discussion, the Commission concluded that a filer is not required to list the assets of the corporation or business organization, but only the name of the entity. After further discussion, the Commission reached consensus that with regard to stocks held in a mutual fund or an investment fund, the determining factor with regard to whether the filer can list the name of the fund only or whether the filer must list the names of the companies held in the fund is whether the particular stocks are registered in the filer's name or in the name of the fund. The Commission noted the practical impossibility of listing the individual stocks or assets held within a mutual fund, because the composition of the fund changes constantly and without notice to the owners of interests in the fund. The staff was instructed to develop proposed revisions to the FAQs and forms on the Commission's

website, consistent with the Commission's determinations, and to present these revisions for Commission review.

Item 15 – Procedures for Submitting, Approving, and Distributing Minutes of Confidential Meetings

After discussion, the Commission reached consensus to continue taking minutes of confidential meetings and continue submitting such minutes for Commission approval. After discussion, the Commission reached consensus to provide a copy of draft confidential minutes prior to approval in the Commission's offices, which any Commissioner could review should he or she so choose.

The meeting was adjourned at 1:08 p.m.