

OPEN SESSION
MINUTES OF THE MEETING OF THE
NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION
Friday, October 16, 2009
State Capitol, Room 1524
Lincoln, Nebraska

Call to Order – Chairman McCollister 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 –

Kevin Brostrom - Present
John Gale – Present
Joseph Grant - Present
Paul Hosford - Present
Steve McCollister – Present
Jan Mumm - Excused
Richard Nelson – Present
Kim Quandt - Excused
Judy Schweikart - Present

Introduction of Commissioner Joseph Grant – Chairman McCollister asked Executive Director Daley to introduce and welcome the new Commissioner Joseph Grant. Commissioner Grant stated that he and his wife have been married for 22 years they have two sons attending UNL, a daughter in high school and a daughter in 8th grade. His wife Mary works as a teachers-aide in Omaha, where Mr. Grant has worked for 28 years at the Hotz, Weaver Law Firm specializing in civil litigation, mediation and workers compensation. Mr. Grant stated that he looks forward to working with the Commission.

Approval of the Open Session Minutes of the August 21, 2009 Meeting - Chairman McCollister referred the Commissioners to their copies of the Open Session Minutes of the previous meeting.

Commissioner Nelson pointed out an error on page 4 of the Open Session Minutes of August 21, 2009, at the end of the first full paragraph.

Motion by Schweikart, second by Gale, that the Open Session Minutes of the August 21, 2009 meeting be approved as presented with correction - Roll Call Vote: Commissioners Brostrom, Gale, Hosford, McCollister, Nelson, and Schweikart voted yes. Commissioner Grant abstained. Motion carried (6-0-1).

Report on Late Filing Fees, including requests for relief – Chiropractors of Nebraska State PAC – Executive Director Daley indicated one application for relief, the Chiropractors of Nebraska PAC. This matter involves the failure to timely file a 2nd General Election Campaign Statement in connection with the 2009 Omaha City Election. This filing was due May 4, 2009 and the statement was filed May 19, 2009. This generated \$375 in late filing fees at the rate of \$25 a day. The Executive Director pointed out that the Committee did request relief and in their letter of September 9, 2009 it stated they had used the same dates for 2009 as they had used in 2008. They had assumed the dates would be the same. However, it was noted that this request was denied as non-eligible because of receipts of \$33,002.50. Statute states that the late filing show less than \$5,000 was raised, received or expended.

Discussion followed.

Motion by Nelson, second by Schweikart, to deny the request for relief from late filing fees by Chiropractors of Nebraska State PAC – Roll Call Vote: Commissioners Brostrom, Grant, Hosford, McCollister, Nelson, and Schweikart voted yes. Commissioner Gale abstained. Motion carried (6-0-1).

Executive Director's Report (includes personnel activity, budget status, budget process and litigation status) – Executive Director Daley announced the appointment of Commissioner Mumm, and Commissioner Grant to the Commission. The Executive Director indicated that several Commissioners have been active in the interim study of the Commission LR 163, before the Government Military & Veterans Affairs Committee. Also noted was the participation of Commissioner Schweikart at one of these meetings and Commissioner Nelson and Commissioner McCollister who have also participated.

The Executive Director next reported on the budget status and current situation based upon the budget which was appropriated for the Agency by the Legislature in the past session. Executive Director Daley indicated that the Commission is in very good shape. However, as reported by the newspapers the overall state revenue projections were significantly lower than projected. The Commissioners were referred to their packets and their copy of the memo from the Governor to all state agencies which requested;

- 1) The elimination of all unnecessary travel.
- 2) Leave vacant any vacant positions in the agency.
- 3) Do not make any capital expenditures.

The Governor's memo also made clear that there would be a Special Session in November to address the revenue shortfall and within this context the possibility that the Commission's budget would be cut.

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Executive Director Daley stated he was not prepared to make any drastic changes, when it's not known what numbers the agency will have. There are not a lot of things to do as roughly 85% of agency budget make up personnel costs. Therefore, without laying people off there are no significant cuts that can be done. Common sense type steps can be taken. Number one, typically replacement of computers and equipment are scheduled, the theory being that this way there would not be any overspending in a single year. There will be a delay of 'wait and see' this year. The second thing is to cut back on the number of people we send to the Conference on the Council of Governmental Ethics Laws. Usually, 2-3 representatives are sent. However, this year it would be wise to only send General Counsel Danberg. It is important for him to get a quick handle on the topics that are dealt with and make connections with other people in other states that do the same work. An additional factor would be with mandatory Continuing Legal Education beginning the first of January. This would give Mr. Danberg an opportunity to pick up some CLE credits.

Discussion followed.

Executive Director Daley reported that in the area of litigation, the Federal Court action filed by Dr. Prokop has been dismissed.

The appeal of the Commission's State Court action against Dr. Prokop is on going, as is the appeal in the matter of the decision in the Michael Nolan case.

Commissioner Schweikart stated that she had attended a Continuing Legal Education seminar, where Executive Director Daley was a speaker. Commissioner Schweikart commended Mr. Daley on the great job he did.

Approve meeting dates for 2010 and 2011 – Chairman McCollister presented to the Commission the proposed meeting dates, stating that the Executive Committee had reviewed them and not found issue with them. Executive Director Daley requested the Commission that the October 29 date be changed to October 22, 2010. The reason being that the General Election day in 2010 is on November 2, and if the meeting date were to be October 22nd, this additional week would be preferred by the staff for needed time preparing materials, getting telephone calls from the candidates, and phone calls from the public and press.

Discussion followed.

Motion by Hosford, second by Nelson, to approve and set the Commission meeting dates – Roll Call Vote: Commissioners Bostrum, Gale, Grant, Hosford, McCollister, Nelson and Schweikart voting yes. Motion carried (7-0-0).

Consideration and action on Commission policy re: Mandatory Continuing Legal Education - Executive Director Daley explained that the lawyers on the Commission are aware that mandatory Continuing Legal Education goes into

effect in January 1, 2010. Prior to this lawyers could take additional education or not as they saw fit. The practice of the Commission in the past has been that if there were a seminar useful to the General Council or Executive Director, the Commission would pay for it. But, now there is an obligation to actively acquire credits. The concern is that very often because the area the agency deals in is very narrow, and that years could go by where nothing is really very applicable. The Executive Director indicated to the Commission, a proposal of 2 Resolutions. The first one essentially takes the position that the Commission would pay for the mandatory Continuing Legal Education credits of the General Council. And second, that the General Council can use work time rather than vacation time to acquire CLE credits.

Discussion followed.

Motion by Gale, second by Brostrum, to adopt Resolution 09-02 and Resolution 09-03 – Roll Call Vote: Commissioners Brostrum, Gale, Grant, Hosford, McCollister, Nelson, and Schweikart voting yes. Motion carried (7-0-0).

Consideration of revision of Commission Policy Manual – The Executive Director reported that for years the Commission has had a policy manual. Occasionally it has been updated, though not for awhile. It hasn't been referred to in a long time as it is clearly out of date. In some cases, Commission practices have varied from what the policy manual suggests what should be done, and in other cases it refers to powers and duties that are no longer the Commissions. Or it doesn't refer to powers and duties the Commission does have. Executive Director Daley asked for guidance from the Commission as to what they would like to do. It was pointed out as being somewhat dangerous leaving a document of the Commissions policies out there and then not following it. The Commission needs to do one of several things.

- 1) update the policy manual
- 2) take action to revoke it
- 3) update and separate into appropriate documents

The Executive Director asked the Commission to take a look at the Policy Manual, so there could be a discussion and decision at the next meeting.

Discussion followed.

Discussion of Upcoming Legislative Session and proposed legislation – Executive Director Daley reported that this is normally the meeting at which the Commission would talk about any legislative proposals that it would like to move forward. And that even though there are odds and ends that would be useful, this would not be a good year to do it. The Executive Director explained that there are a couple of reasons for that. First there were major changes that after requesting for a long time have come into being. With this accomplished the Commission

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was very successful. But, what has been seen recently are a lot of bills that involve the Accountability & Disclosure Commission that are not positive. Bills to drastically increase the gift limitations, bills to reduce the reporting requirement, or bills that in concept, are very, very good. But, in organizational structure were not very good at all. Most of these bills were either held up in committee last year and did not move out of committee. Or they barely moved out of committee, and were not debated on General File. But, they are all still out there. The Executive Director stated the Commission's efforts would best be directed to prevent these bills from becoming law. Or at least working to put them in as good of shape as possible so if they do become law, the Commission can at least administer and enforce them. This is where the NADC's energy should go. Also noted was the problem that this will be a short session, so the likelihood of getting a brand new bill through would not be all that good. Any bill that doesn't become law this session would die and go away completely. Furthermore there would be some fear that putting a bill out there that didn't do something significant for the Commission could create the risk of it being a vehicle for bad legislation. That is the bill that can't get out of committee, because it's terrible, then suddenly the Commission's little bill makes it out of committee and someone amends this bad bill to the Commission's own bill. The Executive Director proposed that this year is not the year for proposals from the Commission for anything a senator could run with. But, to simply concentrate on the legislation out there and work at getting bills into as good of shape as possible or to prevent it from becoming law.

Discussion followed.

Report of Conflicts Committee – Chairman McCollister affirmed that the new Conflicts Committee members are Commissioners Paul Hosford, Richard Nelson, and Kim Quandt. The Chairman indicated that there are no conflicts to report.

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

Closed Session - Motion by Schweikart, second by Nelson that the NADC go into Closed Session pursuant to the confidentiality provisions of the NPADA - Roll Call Vote: Commissioners Brostrom, Gale, Grant, Hosford, McCollister, Nelson, and Schweikart voted yes. Motion carried (7-0-0).

The NADC went into Closed Session at 9:58 a.m.

The NADC returned to Open Session at 10:37 a.m.

Action on or Announcement of Closed Session matters - Executive Director Daley indicated there were three announcements from the Closed Session.

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In case 09-01, in the matter of Richard Adam Hornung, the Commission approved the Settlement Agreement in which the Commission found there had been a violation of section 49.1474.01 and assessed a Civil Penalty of \$250.

In case 09-02, in the matter of Ken Svoboda, the Commission approved a Settlement Agreement in which there was a finding of violation of section 49.1474.01 and it assessed a Civil Penalty of \$250.

In each of these two cases the Settlement Agreement was approved with 7 Commissioner's concurring, none dissenting and none abstaining.

In a third case 09-03, the Executive Director v. Annette McRoy for City Council, Annette McRoy, Candidate and Dan Alberts, Treasurer. The Commission approved the Settlement Agreement in which the Commission found that the Respondents had failed to timely file an annual campaign statement. They found a violation of 49.1462. The Commission assessed a Civil Penalty of \$250. And this was done with 7 Commissioner's concurring, none dissenting and none abstaining.

Adjournment – Motion by Schweikart, second by Hosford, that the NADC adjourn. Roll Call Vote: Commissioners Brostrom, Gale, Grant, Hosford, McCollister, Nelson, and Schweikart voted yes. Motion carried (7-0-0).

Chairman McCollister declared the meeting adjourned at 10:38 a.m.