

OPEN SESSION
MINUTES OF THE MEETING OF THE
NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

Friday, June 19, 2009
State Capitol, Room 1524
Lincoln, Nebraska

Call to Order – Chairman Barry called the meeting to order at 9:04 a.m. and announced the location in the meeting room of a copy of the Public Meetings Law.

Roll Call –

Andre Barry - Present
Marilee Fredrickson - Present
John Gale - Present
Paul Hosford - Present
Steve McCollister - Present
Richard Nelson – Present
Kim Quandt - Present
Gary Rosacker - Present
Judy Schweikart – Excused

Approval of the Open Session Minutes of the May 8, 2009 Meeting - Chairman Barry referred the Commissioners to their copies of the Open Session Minutes of the previous meeting.

Motion by Gale, second by McCollister, that the Open Session Minutes of the May 8, 2009 meeting be approved as presented - Roll Call Vote: Commissioners Barry, Gale, McCollister, Nelson and Quandt voted yes. Commissioners Fredrickson, Hosford and Rosacker abstained. Motion carried (5-0-3).

Report on Late Filing Fees, including requests for relief – Professional Insurance Agents of Nebraska PAC - Executive Director Daley indicated that the first matter before the Commission was the Professional Insurance Agents of Nebraska PAC. The reports which were filed late were the 1st and 2nd General Election Campaign Statements from 2008. These were due October 6th and October 27th of 2008 respectively. They were filed on January 15, 2009, as a part of a Post General Election Campaign Statement. The amount of late filing fees assessed by operation of law was \$1,500. A request for relief was submitted and

subsequently denied. This was based upon the fact that the committee had paid late filing fees within 2 years prior to the date the late filings were due.

Several members of Professional Insurance Agents of Nebraska PAC were in attendance and addressed the Commission, including Mark Suhr, Joseph Elliott, Kathy Hurlbut, Cathy Klasi and Joyce Harner. They reported to the Commission that their former Executive Director had left under less than amicable circumstances. Files were missing, signatures were forged, there were 7 years of letters from the Commission that Ms. Harner had never seen and had never seen which related to late filings. There was no access to bank accounts. Passwords were gone and the president's and treasurer's names had been removed from the bank accounts. It was also discovered that the 2006 and 2007 taxes had not been filed.

Discussion followed.

Motion by McCollister, second by Rosacker, to set aside the fine for Professional Insurance Agents of Nebraska PAC on the basis that records were unavailable due to the fact that they were not available and that constitutes a unique and unintentional reason –

Discussion followed.

Motion by Nelson, second by Quandt, to Amend the Motion to grant relief from late filing fees with regard to the filing of the 1st General Election Statement due October 6, 2008 and to deny relief with regard to the Statement due October 27, 2009 the effect would be to reduce the fine from \$1,500 to \$750 Roll Call Vote: Commissioners Barry, Fredrickson, Hosford, McCollister, Nelson, and Quandt voted yes. Commissioner Gale and Commissioner Rosacker voted no. Motion carried (6-2-0).

The Commission then proceeded to vote on the motion as amended.

Motion to grant relief from late filing fees with regard to the filing of the 1st General Election Statement due October 6, 2008 and to deny relief with regard to the Statement due October 27, 2009 the effect would be to reduce the fine from \$1,500 to \$750– Roll Call Vote: Commissioners Barry, Fredrickson, Gale, Hosford, McCollister, Nelson, Quandt and Rosacker voted yes. Motion carried (8-0-0).

Report on Late Filing Fees, including requests for relief – Nebraska Alliance for the Private Sector – Executive Director Daley indicated that this request for relief is from the Nebraska Alliance for the Private Sector. Its 2008 Post General Election Campaign Statement was due on January 13, 2009, and filed on January 21st. Late filing fees of \$200 were assessed. A request for relief

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was denied by virtue of the fact that the report disclosed receipts and expenditures of more than \$5,000.

Motion by Quandt, second by Rosacker, to deny relief of late filing fees by Nebraska Alliance for the Private Sector – Roll Call Vote: Commissioners Barry, Fredrickson, Gale, Hosford, McCollister, Nelson, Quandt and Rosacker 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 that Kevin Brostrom of Grand Island has been appointed by the Governor to succeed Commissioner Fredrickson. His term begins in July and he has been confirmed by the Legislature.

Executive Director Daley noted that Commissioner Barry and Commissioner Rosacker's successors appointments are still pending.

Executive Director Daley reported that in the area of litigation, the Commission was successful in securing its judgment against Dr. Robert Prokop to collect late filing fees. It was also reported that the Federal Court action against the Commission by Dr. Prokop was still pending.

The Executive Director noted that an item in the Budget had been redone. Most of the numbers remain the same. However, the deficit appropriation involving the retirement of the General Counsel had been added.

Lastly, Deputy Director Hinman addressed the Commission about the budget, stating that the agency appropriated any carry over money. That is any money that was not spent, and according to the bill the Legislature passed, any money from the agency cash fund and the general fund would be re-appropriated back to the NADC.

Discussion followed.

Legislative Update – The Executive Director next gave the legislative update of bills.

LB 322 – Clarifies the anti-nepotism law. The current law has two main problems. 1) The definition of immediate family member is very narrow. It includes a spouse and someone claimed as a dependent for federal income tax purpose. The category of people it affected is simply too narrow. The new law expands the category of relatives affected by the law. 2) A state employee could end up supervising an immediate family member, without any input about the hiring process. This would be in violation of the Accountability & Disclosure Act and there is nothing in place to address the issue. The new law does prohibit the hiring and supervising and the recommending of hiring a family member. LB 322

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also provides that an employee who finds himself or herself supervising a family member must notify the agency head in writing. It is then up to the agency head to make an adjustment to rectify the situation. If the agency head determines there is good cause shown, he may waive the prohibition and file this finding with the Commission.

LB 626 – This bill passed and provides that an incidental or de minimis use of public resources shall not be considered a violation of section 49-14.101.01 or 4914.101.02. It provides that the use of certain communication devices in state government such as e-mail and telephones can be used for essential personal business without being in violation of the section. It clarifies and expands the way public resources can be used by political subdivision, when there is a ballot question that would affect that political subdivision.

Discussion followed.

LR 163 – This is a resolution by Senator Avery to have the Government Committee study the Accountability Act, the Campaign Finance laws and the activities of the Commission. This provides an opportunity for the Commission to provide a primer to state legislators on the legal landscape that surrounds campaign finance. Campaign finance laws often raise issues of free speech and freedom of association.

Discussion followed.

LB 635 – A bill by Senator Mello that requires political parties to include in their campaign statements the same information that independent committees or PAC's provide. This did not pass this year but, did advance to general file. It is likely to be considered by the Legislature in 2010.

LB 638 - This bill by Senator Lautenbaugh has the effect of repealing the Campaign Finance Limitation Act. And it requires disclosure of contributions and expenditures of more than \$50. Currently contributions of more than \$250 are disclosed. LB 638 requires that by a certain date the filings of candidates would be electronic and there would be an obligation to file a new campaign statement every time there was a transaction of \$50 or more. This bill did not pass this year, but is on General File and could be considered next year.

Discussion followed.

Report on Candidate Electronic Filing Project – The Executive Director stated that he was pleased to report that the State Records Board had approved a \$25,000 grant to the Commission to develop and implement an electronic filing system for candidates. The goal is to have this in place by the 2010 elections. Executive Director Daley extended thanks to Commissioner Gale and the State Records Board for the grant.

Consideration and Action on proposed agency write-offs- Executive Director Daley stated that the purpose of write-off was to make a determination that certain late filing fees, civil penalties and interest was uncollectible and to begin the process of removing these accounts from the Commission's book. As to each account to be written-off, Daley provided a synopsis of the collection steps taken and the reasons that a write-off seemed advisable. He stated that most of the account to be written off predated certain statutory changes that clarified who, in the case of a committee, was responsible for late fees and civil penalties. Subsequent legislation also required certain ballot question committees to post bonds to guarantee the payment of late fees. The Executive Director asked the Commission to determine that the late filing fees and civil penalties listed are uncollectible and to direct the staff to submit them to the State Claims Board requesting that they be written-off.

Discussion followed.

Motion by Barry, second by Fredrickson, that the Commission determine that civil penalties and late filing fees listed on the write-off document, plus any interest thereon be deemed uncollectible and that the staff is directed to submit the same to the State Claims Board with the request that the list of late filing fees and civil penalties and any interest thereon be written-off - Roll Call Vote: Commissioners Barry, Fredrickson, Gale, Hosford, McCollister, Nelson, Quandt and Rosacker voted yes. Motion carried (8-0-0).

Evaluation of Executive Director – Chairman Barry stated that unless Mr. Daley had anything else for Open Session that he would entertain a motion to go into Closed Session to discuss a personnel matter.

Motion by Barry, second by McCollister, to go into Closed Session for the purpose of discussing the evaluation of the Executive Director, the discussion in Closed Session shall be for the purpose of avoiding needless injury to the reputation of individuals - Roll Call Vote: Commissioners Barry, Fredrickson, Gale, Hosford, McCollister, Nelson, Quandt and Rosacker voted yes. Motion carried (8-0-0).

The NADC went into Closed Session. 10:37 a.m. The staff was excused for deliberation, only the Commissioners remained in the room.

The NADC returned to Open Session 10:44 a.m. Discussion followed. It was noted that all of the comments of Commissioners would be incorporated into a single document and provided upon completion.

Motion by Barry, second by Fredrickson, to approve and accept the evaluation documents of the Executive Director – Roll Call Vote:

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Commissioners Barry, Fredrickson, Gale, Hosford, McCollister, Nelson, Quandt and Rosacker voted yes. Motion carried (8-0-0).

Determination of the salaries of Executive Director and Deputy Director.

Motion by Rosacker, second by Fredrickson, to approve and to adopt an increase in the salary for the Executive Director and Deputy Director of 2.9% effective July 1, 2009 – Roll Call Vote: Commissioners Barry, Fredrickson, Gale, Hosford, McCollister, Nelson, Quandt and Rosacker voted yes. Motion carried (8-0-0).

Report of Conflicts Committee - Commissioner McCollister indicated that there were no challenges to report.

Report of Executive Committee – Chairman Barry stated that there was nothing to report at this time.

Closed Session - Motion by Fredrickson, second by Nelson that the NADC go into Closed Session pursuant to the confidentiality provisions of the NPADA - Roll Call Vote: Commissioners Barry, Fredrickson, Gale, Hosford, McCollister, Nelson, Quandt and Rosacker voted yes. Motion carried (8-0-0).

The NADC went into Closed Session at 10:50 a.m.

The NADC returned to Open Session at 10:55 a.m.

Action on or Announcement of Closed Session matters - Executive Director Daley indicated there were no actions of the Commission to be announced from Closed Session.

Election of Commission Officers – Chairman Barry stated that he prepared a slate of officers for the upcoming year. He proposed Commissioner McCollister, Commissioner Schweikart and Commissioner Hosford as Chairman, Vice-Chairperson and Secretary, respectively. Chairman Barry indicated all of the candidates had agreed and asked if there were any other nominations. None were made.

Motion by Quandt, second by Fredrickson, to approve and accept the slate of officers as proposed – Roll Call Vote: Commissioners Barry, Fredrickson, Gale, Hosford, McCollister, Nelson, Quandt and Rosacker voted yes. Motion carried (8-0-0).

Recognition of the service of Commissioner Gary Rosacker - Executive Director Daley stated that this was the part about June that he detested because the Commission had to say goodbye to some of their colleagues. Due to a quirk in the legislature in the 1970's every 6th year there are three colleagues to say

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goodbye to. Daley stated that Commissioner Rosacker started with the Commission in September 2003. At his first meeting in a matter involving e-mail by school employees, Rosacker said "I can't believe they thought that was ok". Daley stated he realized then that Gary Rosacker was a keeper. Daley described Commissioner Rosacker's greatest characteristic as a refined sense of right and wrong and what is ethical and what is not. Executive Director presented Commissioner Rosacker with an engraved clock as a token of the Commission's appreciation for his service.

Commissioner Gale thanked Commissioner Rosacker for his high standard of ethics, morality and service. Commissioner Gale presented him with a Secretary of State Citation, and a marble paperweight with the Seal of Nebraska.

Commissioner Rosacker extended his appreciation and thanks to the Commission.

Recognition of the service of Commissioner Andre Barry – Executive Director Daley stated that Chairman Barry has been with Commission since 2003. Daley described him as the most thoughtful and analytical Commissioner who had ever served. This has resulted in solid and well thought out decisions. Executive Director Daley presented Commissioner Barry with an engraved clock as a token of appreciation by the Commission for his service.

Commissioner Gale thanked Commissioner Barry and stated that as a Republican to a Democratic he couldn't be prouder of his service. Commissioner Gale presented Chairman Barry with the Secretary of State Citation, and a marble paperweight with the Seal of Nebraska.

Chairman Barry thanked everyone and stated he thoroughly enjoyed being on the Commission and was grateful for the opportunity.

Recognition of the service of Commissioner Marilee Fredrickson – The Executive Director stated that Commissioner Fredrickson had been on the Commission since 2000. Daley described Commissioner Fredrickson as a person of good common sense who was not afraid to tell people yes or no as the circumstances warranted. Executive Director Daley presented Commissioner Fredrickson with an engraved clock as a token of appreciation for her service with the Commission.

Commissioner Gale thanked Commissioner Fredrickson for her high regard for integrity in government and willingness to help insure it. Commissioner Gale presented her with the Secretary of State Citation, and a marble paperweight with the Seal of Nebraska.

Commissioner Fredrickson thanked the Commission stating it's a part of government that's very important and that she had enjoyed being on the Commission.

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Adjournment – Motion by Rosacker, second by Fredrickson, that the NADC adjourn. Roll Call Vote: Commissioners Barry, Fredrickson, Gale, Hosford, McCollister, Nelson, Quandt and Rosacker voted yes. Motion carried (8-0-0).

Chairman Barry declared the meeting adjourned at 10:57 a.m.