

OPEN SESSION
MINUTES OF THE MEETING OF THE
NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION
Friday, April 19, 2013
State Capitol, Room 1524
Lincoln, Nebraska

Call to Order – Chairman Hosford 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
Sean Conway - Present
John Gale – Excused for Late Arrival
Joseph Grant - Present
Paul Hosford - Present
Jan Mumm - Excused
Richard Nelson – Present
Timothy Schulz - Present
Brad von Gillern - Present

Approval of the Open Session Minutes of the March 1, 2013 Meeting - Chairman Hosford referred the Commissioners to their copies of the Open Session Minutes of the previous meeting.

Motion by Conway, second by Nelson, that the Open Session Minutes of the March 1, 2013 meeting be approved as presented - Roll Call Vote: Commissioners Conway, Grant, Hosford, Nelson, Schulz, von Gillern voted yes. Commissioner Brostrom abstained. Motion carried (6-0-1).

Report on Late Filing Fees, including requests for relief – Tom Barrett for OPPD; Tom Barrett, Candidate – Chairman Hosford announced that item #3 had been postponed.

Executive Director’s Report (includes personnel activity, budget status, budget process and litigation status) – Executive Director Daley announced the sad news that Commissioner Nelson’s term on the Commission would expire

Open Session Minutes
April 19, 2013

at the end of June. Commissioner Nelson's successor will be picked by Secretary of State John Gale from a list supplied by the state Republican Party.

The Executive Director reported on the budget. He noted that the Commission is now 9 months into the current budget year and has expended approximately 58% of the budget.

Executive Director Daley indicated that the Appropriations Committee hearing for the Accountability and Disclosure Commission was on March 14th and that it seemed to go well.

The Executive Director reminded the Commission that he had registered as a lobbyist electronically for the purpose of testing the system. He reported that he had recently filed the 1st Quarter lobbyist and principal reports online. It was noted that there were some minor issues that were corrected by the Legislature's IT staff. Otherwise it went smoothly.

Executive Director Daley noted the decision of the District Court of Lincoln County in the Skinner (10-15) and Tlustos (10-16) cases. These are a separate agenda item.

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

LB 79 – The Legislature passed Senator Avery's LB 79 on final reading. It will next go to the Governor for approval or veto. The bill formally repeals the CFLA. The final version of the bill would transfer \$639,000 from the CFLA Fund to the NADC Cash Fund. This money would be used for the development of an electronic filing system and for an on-staff I.T. person to provide technical support. LB 79 also changes the reporting trigger to \$250 or more. The provision that required committees to submit a bank statement along with their annual statement was stricken by the Government Committee.

Discussion followed.

LB 27 – This bill by Senator Hadley would expand the opportunities for those seeking to become certified public accountants by changing the qualifying internship requirements. Pursuant to the bill, any state agency meeting certain standards could establish a qualifying internship program. Currently, only the Department of Revenue and Auditor of Public Accounts may establish such programs. The bill was passed by the Legislature and signed by the Governor.

LB 294 - This bill by Senator Seiler was drafted in direct reaction to the Skinner and Tlustos cases. It has not made it out of committee and is unlikely to receive further consideration this year. This bill attempts to define what constitutes campaign activity. Public officials and public employees would be prohibited

Open Session Minutes
April 19, 2013

from using public resources for campaign activity. The bill is being held in committee.

LB 364 – This bill by Senator Avery provides that a government body may prohibit government employees or government officials from having an interest in a contract with the government body. LB 264 is currently being held in committee.

Discussion Followed.

Motion by Nelson, second by Grant, to postpone item #6 Consideration and action regarding the decision of District Court in Skinner 10-15 and Tlustos 10-16 for arrival of Commissioner Gale – Roll Call Vote: Commissioners Brostrom, Conway, Grant, Hosford, Nelson, Schulz and von Gillern voted yes. Motion carried (7-0-0).

Report on staff process for anonymous and Commissioner communications – Executive Director Daley indicated that this report was born of a letter sent to Commissioner Mumm. The letter took issue with the fact that there is nothing on the NADC website that provides for anonymous complaints and nothing on the agency website for direct communication with Commission members. The Executive Director explained that the Commission serves as an information and resource agency for the public and press. The NADC regularly receives information, statements and reports from candidates, committees, lobbyists and principals. It regularly receives inquiries on filing obligations. The Commission staff responds to these inquiries. The other role of the NADC is as an enforcement agency. The Commission has an obligation not only to administer, but to enforce the NPADA. The Commission is also subject to the Administrative Procedures Act which governs the enforcement process of all state agencies. A provision in the NPADA requires a complaint to be signed under oath. Complaints received that are anonymous and unsigned are disregarded and do not result in the commencement of an investigation. It was noted that if the Commission takes steps to verify the information in an anonymous complaint, that action constitutes an investigation and requires notice to the accused. Finally, it was noted that the Auditor of Public Accounts does accept anonymous complaints that relate to misuse of government funds. The Executive Director stated that contact information for individual Commissioners could be placed on the website if the Commission so desired.

Commissioner Gale was present at 9:20 a.m.

Discussion followed. The consensus was that anonymous communications were being satisfactorily handled and that there is no need to include contact information for Commissioners on the website since Commissioners contacted on Commission issues normally refer matters to the Executive Director.

Consideration and action regarding decision of District Court in Skinner 10-15 and Tlustos 10-16 – General Counsel Danberg reminded the Commission that it had found a violation of §49-14,101.02 in each of these cases. This matter was appealed to the District Court of Lincoln County which reversed the decision of the Commission. The Commission needs to determine if it will appeal the decision of the District Court to the Court of Appeals.

Motion by Brostrom, second by Grant, that the Commission go into closed session at 9:40 a.m. for the purpose of discussing the subject of the decision of the District Court of Lincoln County in the Skinner Tlustos cases and the discussion in closed session shall be for the purpose of holding a strategy session with respect to litigation – Roll Call Vote: Commissioners Brostrom, Conway, Gale, Grant, Hosford, Nelson, Schulz and von Gillern voted yes. Motion carried (8-0-0).

The NADC went into Closed Session at 9:40 a.m.

The NADC returned into Open Session at 10:45 a.m.

Motion by Conway, second by Gale, to appeal the decisions of the District Court of Lincoln County in Cases 10-15 and 10-16. Roll Call Vote: Commissioners Brostrom, Conway, Gale, Grant, Hosford, Nelson, Schultz and von Gillern voted yes. Motion carried (8-0-0).

Discussion of process for election of officers – Chairman Hosford proposed that Commissioner Nelson put together a slate of officers to present at the June meeting.

Discussion of process for evaluation of Executive Director – Chairman Hosford announced that Commissioner Brostrom would head the process for evaluation of the Executive Director. Commissioner Brostrom explained that he would draw up an evaluation instrument that would give each commission member the opportunity to respond on the performance of the Executive Director.

Report of Conflicts Committee – Commissioner von Gillern indicated that there were 10 Potential Conflict of Interest Statements received. Executive Director Daley briefly explained the reasons for the different responses by the staff to potential conflict of interest filings.

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

Closed Session - Motion by Brostrom, second by Grant, that the NADC go into Closed Session pursuant to the confidentiality provisions of the

Open Session Minutes
April 19, 2013

NPADA - Roll Call Vote: Commissioners Brostrom, Conway, Gale, Grant, Hosford, Nelson, Schulz, and von Gillern voted yes. Motion carried (8-0-0).

The NADC went into Closed Session at 9:25 a.m.

The NADC returned to Open Session at 11:19 a.m.

Action on or Announcement of Closed Session matters - Executive Director Daley indicated that in the matter of Greg Shepard (case 13-03) the Commission approved a settlement agreement in which it found a violation of §49-14,102 and assessed the civil penalty of \$250. The settlement agreement was approved with 8 commissioners concurring, none dissenting and none abstaining. The civil penalty of \$250 was approved with 8 commissioners concurring, none dissenting, and none abstaining.

Adjournment – Motion by von Gillern, second by Schulz, that the NADC adjourn. Roll Call Vote: Commissioners Brostrom, Conway, Gale, Grant, Hosford, Nelson, Schulz, and von Gillern voted yes. Motion carried (8-0-0).

Chairman Hosford declared the meeting adjourned at 11:21 a.m.