



TEXAS ETHICS COMMISSION MEETING MINUTES

February 12, 2008, 8:30 a.m.

Capitol Extension, Room E1.010, Austin, Texas 78701



COMMISSIONERS PRESENT: Tom Harrison, Chair; Ross Fischer, Vice Chair; Raymond R. "Tripp" Davenport, III; Jim Graham; Paula M. Mendoza; David Montagne; and Nicholas C. Taylor.

COMMISSIONERS ABSENT: Wilhelmina Delco.

STAFF PRESENT: Natalia L. Ashley, Amy Barden, Margie Castellanos, Homer Diaz, Robbie Douglas, Sharon Finley, Brad Johnson, Becky Levy, Bobby Mannas, Mike McElhaney, Sandy Mitchell, David A. Reisman, Veronica Scott, Tim Sorrells, Ian Steusloff, and Mary Young.

MINUTES

This meeting was tape recorded. These minutes are a summary record of the commission's actions at the meeting. For a detailed record of discussions and statements made by persons speaking at the meeting, please consult the audio tapes on file at the commission's office.

Agenda Item 1: Call to order; roll call.

The meeting was called to order by Chair Harrison. David A. Reisman, Executive Director, called the roll. All commissioners were present, except Commissioner Delco.

Agenda Item 2: Communication to the commission from the public.

None.

Agenda Item 3: Comments by the commissioners.

Chair Harrison thanked Commissioner Davenport for his years of service to the Texas Ethics Commission.

Agenda Item 4: Comments by the executive director.

David A. Reisman, Executive Director, made the following comments:

1. Mr. Reisman welcomed the Texas Ethics Commission's new liaison Sally Forester, with the Governor's Office. He also welcomed Patrick Dudley, with the House Elections Committee, who has been working with staff in the preparation for the meeting regarding interim charges.
2. Personal financial statements are due on Wednesday, April 30, 2008. Commissioners wishing to receive a sixty-day extension should notify staff.

3. The Comptroller's Office post-payment audit was completed on February 1, 2008. The findings have already been addressed. Mr. Reisman thanked the Comptroller's Office for their time and resources in completing the audit and working with staff.
4. Included in the commissioners' notebooks in the left hand pocket is a software demonstration disc that is a new pilot project prepared by staff that walks a first time electronic filer through a simulated MPAC electronic filing. Amy Barden, Legal Assistant, did the voiceover that leads the filer through the process. It is also located on the Ethics Commission's website.
5. At the request of Chair Harrison, Mr. Reisman addressed the issue of the problem with the posting of the semiannual filings on the Internet, which has been corrected and reports were posted within the forty-eight hour deadline. There have been no problems with the 30-day pre-election report filings.
6. Mr. Reisman addressed the issue of the Quorum Report that erroneously reported that the Ethics Commission's policy was not to post those reports filed electronically until all reports by the candidates in a particular race have been received, which is incorrect. Mr. Reisman stated that it is not an Ethics Commission policy, but a statute that states that until all reports by the candidates in a particular race have been received, the reports are not to be posted.
7. In calendar year 2007, the commission received 238 sworn complaints. Currently in 2008, in the first five weeks, we have received 54 sworn complaint filings.

Agenda Item 5: Approve minutes of the December 11, 2007, meeting.

Motion by Commissioner Taylor to adopt the December 11, 2007, meeting minutes; second by Commissioner Mendoza. Motion passed by a vote of seven ayes.

For Agenda Items 6 and 7, the following represents the actions taken by the Ethics Commission in the order they occurred during the meeting.

Agenda Item 6: Briefing, discussion, and possible action to waive or reduce certain penalties assessed for late filing of campaign finance reports, lobby reports, or personal financial statements.

16. Pamela R. Beachley, Lobbyist (00012298)
 - Report (a): lobby activities report due June 11, 2007
Penalty: \$500
 - Report (b): lobby activities report due July 10, 2007
Penalty: \$500
 - Report (c): lobby activities report due August 10, 2007
Penalty: \$500

Report (d): lobby activities report due September 10, 2007
 Penalty: \$500

Report (e): lobby activities report due October 10, 2007
 Penalty: \$500

Report (f): lobby activities report due November 13, 2007
 Penalty: \$500

Report (g): lobby activities report due December 10, 2007
 Penalty: \$500

Total penalties: \$3,500 Total recommended penalties: \$1,100

Motion by Vice Chair Fischer to adopt staff's recommendations on Agenda Item 6, number 16; second by Commissioner Graham. Motion passed by a vote of seven ayes. **Staff's recommendations are adopted on Agenda Item 6, number 16.**

1. Guillermo Gandara, Jr., Candidate, State Representative (00057999)
 Report: semiannual report due July 17, 2006
 Penalty: \$10,000
 Staff recommendation: waiver of the late-filing penalty
2. Fred Hill, State Representative (00020297)
 Report: speaker candidate report due November 1, 2007
 Penalty: \$500
 Staff recommendation: waiver of the late-filing penalty
3. James Hoerberling, Treasurer, 'P-PAC' Professionals Political Action Committee, HDR, Inc. (00016442)
 Report: 8-day pre-election report due October 29, 2007
 Penalty: \$2,500
 Staff recommendation: waiver of the late-filing penalty
4. Lindsay Sander, Lobbyist (00054066)
 Report: lobby activities report due December 10, 2007
 Penalty: \$500
 Staff recommendation: waiver of the late-filing penalty

Motion by Commissioner Taylor to adopt staff's recommendations on Agenda Item 6, numbers 1 through 4; second by Commissioner Mendoza. Motion passed by a vote of six ayes on Agenda Item 6, number 1. Commissioner Davenport abstained. Motion passed by a vote of seven ayes on Agenda Item 6, numbers 2 through 4. **Staff's recommendations are adopted on Agenda Item 6, numbers 1 through 4.**

5. Richard K. Stum, Treasurer, Texas State Council Of Machinist & Aerospace Workers, MNPL (00015803)
 Report: 8-day pre-election report due October 29, 2007
 Penalty: \$600
 Staff recommendation: waiver of the late-filing penalty

6. Karrie C. Washenfelder, Treasurer, 'FBEF-COPE' Fort Bend Employee Federation Committee on Political Education (00055453)
Report: 30-day pre-election report due October 9, 2007
Penalty: \$500
Staff recommendation: waiver of the late-filing penalty

Motion by Commissioner Taylor to adopt staff's recommendations on Agenda Item 6, numbers 5 and 6; second by Vice Chair Fischer. Motion passed by a vote of seven ayes. **Staff's recommendations are adopted on Agenda Item 6, numbers 5 and 6.**

7. Jeffrey Hons, Treasurer, Winning for Women: A PAC for the Gov't Affairs Council at Planned Parenthood of San Antonio & South Central Texas (00055999)
Report: monthly report due November 5, 2007
Penalty: \$500
Staff recommendation: waiver of the late-filing penalty

8. Sharon K. Martin, Treasurer, Daughters of Liberty Republican Women (00028792)
Report: 8-day pre-election report due October 29, 2007
Penalty: \$2,900
Staff recommendation: waiver of the late-filing penalty

9. Texas Legislative Tourism Caucus (00058243)
Report: semiannual report due January 15, 2008
Penalty: \$500
Staff recommendation: waiver of the late-filing penalty

Motion by Vice Chair Fischer to adopt staff's recommendations on Agenda Item 6, numbers 7 through 9; second by Commissioner Montagne. Motion passed by a vote of seven ayes. **Staff's recommendations are adopted on Agenda Item 6, numbers 7 through 9.**

10. Thao Dao, Treasurer, 'VAVN PAC' Vietnamese American Voters Network Political Action Committee (00058306)
Report: monthly report due June 5, 2007
Penalty: \$500
Staff recommendation: no waiver of the late-filing penalty

11. Richie Floyd, Treasurer, Plano Fire Fighters Committee for Effective Government (00053822)
Report: monthly report due December 5, 2007
Penalty: \$500
Staff recommendation: no waiver of the late-filing penalty

12. Carl Garrison, Treasurer, 'FBCDP' The Fort Bend County Democratic Party (CEC) (00056261)
Report: semiannual report due July 16, 2007
Penalty: \$500
Staff recommendation: no waiver of the late-filing penalty

13. John Michael Glynn, Jr., Treasurer, Fort Worth Firefighters Committee for Responsible Government (00016325)
Report: runoff report due December 10, 2007
Penalty: \$500
Staff recommendation: no waiver of the late-filing penalty
14. Claudia Flores Rodas, Lobbyist (00056554)
Report: lobby activities report due December 10, 2007
Penalty: \$500
Staff recommendation: no waiver of the late-filing penalty
15. James Dean Schull, Candidate, State Representative (00062138)
Report: personal financial statement due November 1, 2007
Penalty: \$500
Staff recommendation: no waiver of the late-filing penalty

Motion by Vice Chair Fischer to adopt staff's recommendations on Agenda Item 6, numbers 10 through 15; second by Commissioner Graham. Motion passed by a vote of seven ayes. **Staff's recommendations are adopted on Agenda Item 6, numbers 10 through 15.**

17. Jayme Cox, Lobbyist (00055628)
Report: lobby activities report due December 10, 2007
Penalty: \$500
Staff recommendation: reduction of the late-filing penalty to \$250
18. Caroline Mary O'Connor, Lobbyist (00053630)
Report: lobby activities report due January 10, 2008
Penalty: \$500
Staff recommendation: reduction of the late-filing penalty to \$250

Motion by Vice Chair Fischer to adopt staff's recommendations on Agenda Item 6, numbers 17 and 18; second by Commissioner Mendoza. Motion passed by a vote of seven ayes. **Staff's recommendations are adopted on Agenda Item 6, numbers 17 through 18.**

19. Mike Freden, Treasurer, Tarrant Citizens for a Fair Judiciary, Inc.
Report: semiannual report due July 16, 2007
Penalty: \$500
Staff recommendation: October 2007 meeting, the commission voted not to waive the late-filing penalty

Motion by Commissioner Taylor to reduce the \$500 late-filing penalty to \$100 on Agenda Item 6, number 19; second by Commissioner Montagne. Motion passed by a vote of seven ayes. **Reduction of the late-filing penalty to \$100 is adopted on Agenda Item 6, number 19.**

20. Marcellus A. Taylor, Member, Texas Public Finance Authority (00057216)
Report: personal financial statement due April 30, 2007
Penalty: \$500
Staff recommendation: waiver of the late-filing penalty

Motion by Commissioner Taylor to adopt staff's recommendation on Agenda Item 6, number 20; second by Commissioner Montagne. Motion passed by a vote of seven ayes. **Staff's recommendation is adopted on Agenda Item 6, number 20.**

Agenda Item 7: Briefing, discussion, and possible action to waive or reduce late-filing penalties in connection with certain corrected reports or to determine whether certain corrected reports as originally filed substantially complied with the applicable law.

4. Michael W. McKinney, Treasurer, Wholesale Beer Distributors of Texas PAC (00015672)
Report: monthly report due July 5, 2006
Penalty: \$500
Staff recommendation: no waiver of the late-filing penalty

Michael W. McKinney spoke before the commission. Motion by Commissioner Graham to adopt staff's recommendation on Agenda Item 7, number 4; second by Commissioner Montagne. Motion passed by a vote of seven ayes. **Staff's recommendation is adopted on Agenda Item 7, number 4.**

5. Richard E. Raymond, State Representative (00021186)
Report (a): semiannual report due January 16, 2007
Penalty: \$10,000
Staff recommendation: waiver of the late-filing penalty

Report (b): semiannual report due July 16, 2007
Penalty: \$500
Staff recommendation: waiver of the late-filing penalty

Richard E. Raymond, State Representative, spoke before the commission. Motion by Commissioner Taylor to adopt staff's recommendations on Agenda Item 7, number 5; second by Vice Chair Fischer. Motion passed by a vote of seven ayes. **Staff's recommendations are adopted on Agenda Item 7, number 5.**

7. Richard Box, Treasurer, Texans For Rick Perry (00015741)
Report (a): 8-day pre-election report due October 30, 2006
Penalty: \$10,000

Jeffrey Boyd, representing Mr. Box, spoke before the commission. Motion by Vice Chair Fischer that the original report substantially complied with the applicable law; second by Commissioner Taylor. Motion passed by a vote of seven ayes. **The report substantially complied with the applicable law is adopted on Agenda Item 7, number 7.**

1. Sudie M. Sartor, Treasurer, South Texans for Good Government (00058340)
Report: 8-day pre-election report due October 29, 2007
Penalty: \$8,200
Staff recommendation: that the original report substantially complied with the applicable law

2. Michael Shultz, Treasurer, Consolidated Communications PAC, Inc.-Texas (00060034)
Report: 8-day pre-election report due May 4, 2007
Penalty: \$10,000
Staff recommendation: that the original report substantially complied with the applicable law

Motion by Commissioner Montagne to adopt staff's recommendations on Agenda Item 7, numbers 1 and 2; second by Commissioner Taylor. Motion passed by a vote of seven ayes. **Staff's recommendations that the report substantially complied with the applicable law is adopted on Agenda Item 7, numbers 1 and 2.**

3. Harvey R. Hilderbran, State Representative (00020285)
Report (a): semiannual report due January 16, 2007
Penalty: \$10,000
Staff recommendation: reduction of the late-filing penalty to \$1,000

Report (b): semiannual report due July 16, 2007
Penalty: \$500
Staff recommendation: no waiver of the late-filing penalty

Total penalties: \$10,500 Total recommended penalty: \$1,500

Motion by Commissioner Graham to adopt staff's recommendations on Agenda Item 7, number 3; second by Commissioner Mendoza. Motion passed by a vote of six ayes. Vice Chair Fischer abstained. **Staff's recommendations are adopted on Agenda Item 7, number 3.**

6. John Whitmire, State Senator (00019581)
Report (a): personal financial statement due April 30, 2004
Penalty: \$500
Staff recommendation: waiver of the late-filing penalty
- Report (b): personal financial statement due May 2, 2005
Penalty: \$500
Staff recommendation: waiver of the late-filing penalty
- Report (c): personal financial statement due February 13, 2006
Penalty: \$500
Staff recommendation: waiver of the late-filing penalty

Total penalties: \$1,500

Motion by Commissioner Montagne to adopt staff's recommendations on Agenda Item 7, number 6; second by Vice Chair Fischer. Motion passed by a vote of seven ayes. **Staff's recommendations are adopted on Agenda Item 7, number 6.**

Return to Agenda Item 6.

10. Thao Dao, Treasurer, 'VAVN PAC' Vietnamese American Voters Network Political Action Committee (00058306)
Report: monthly report due June 5, 2007
Staff recommendation: no waiver of the late-filing penalty

Cindy Nguyen, representing Mr. Dao, spoke before the commission. Motion by Commissioner Taylor to reconsider Agenda Item 6, number 10; second by Vice Chair Fischer. Motion passed by a vote of seven ayes. Motion by Vice Chair Fischer to waive the late-filing penalty on Agenda Item 6, number 10; second by Commissioner Davenport. Motion passed by a vote of seven ayes. **Waiver of the late-filing penalty is adopted on Agenda Item 6, number 10.**

Agenda Item 8: AOR 541: Whether an elected judge may use political contributions to pay the premiums of a Judge's Professional Liability Insurance Policy.

Natalia L. Ashley, General Counsel, briefed the commission on this agenda item. Motion by Commissioner Mendoza to adopt staff's recommendation on Agenda Item 8; second by Commissioner Montagne. Motion passed by a vote of six ayes. Vice Chair Fischer was off the dais.

Agenda Item 9: AOR 542: Whether a general-purpose political committee may ask a candidate for the house of representatives questions concerning candidates for speaker of the house of representatives and whether the committee may base its decision to support or not to support the candidate for the house of representatives on the responses to those questions.

Natalia L. Ashley, General Counsel, briefed the commission on this agenda item. Motion by Vice Chair Fischer to adopt staff's recommendation Draft #2 on Agenda Item 9; second by Commissioner Graham. Motion passed by a vote of seven ayes. **Staff's recommended Draft #2 is adopted on Agenda Item 9.**

Agenda Item 10: Public discussion and possible action on the proposal and publication in the Texas Register of Ethics Commission Rule § 20.50 (Total Political Contributions Maintained), relating to the reporting of the total amount of political contributions maintained as of the last day of the reporting period for purposes of sections 254.031(8) and 254.0611(a)(1) of the Election Code.

Natalia L. Ashley, General Counsel, briefed the commission on this agenda item. Motion by Commissioner Taylor to publish for public comment in the Texas Register the staff proposed rule and to include "at cost" in (a)(3) on Agenda Item 10; second by Commissioner Davenport. Motion passed by a vote of seven ayes. **Staff proposed rule with added language on Agenda Item 10 to be published in the Texas Register for comment.**

Agenda Item 11: Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rule § 34.21 (Contingent Fees for Influencing Purchasing Decisions), relating to contingent fees.

Natalia L. Ashley, General Counsel, briefed the commission on this agenda item. Jack Gullahorn, Attorney, Professional Advocacy Association of Texas, spoke before the commission in support of Option One. Motion by Vice Chair Fischer to publish for public comment in the Texas Register the staff draft proposed rule Option One on Agenda Item 11. Motion failed by a vote of two ayes. Chair Harrison, Commissioners Davenport, Graham,

Mendoza, and Montagne voted no. Motion by Commissioner Davenport to publish for public comment in the Texas Register the staff draft proposed rule Option Two on Agenda Item 11; second by Commissioner Graham. Motion passed by a vote of five ayes. Vice Chair Fischer and Commissioner Taylor voted no. **Staff draft proposed rule Option Two on Agenda Item 11 to be published in the Texas Register for comment.**

Agenda Item 12: Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules §§ 34.45 (Entity Registration), 34.85 (Individual Reporting Expenditure by Entity), and 34.65 (Compensation Reported by Lobby Firm Employee), relating to reporting requirements by a lobbyist or an entity.

Natalia L. Ashley, General Counsel, briefed the commission on this agenda item. Jack Gullahorn, Attorney, Professional Advocacy Association of Texas, spoke before the commission. Patrick Dudley, Chief Clerk of the House Committee on Elections, spoke before the commission. Motion by Commissioner Mendoza to publish for public comment in the Texas Register the staff proposed Option Two on Agenda Item 12; second by Commissioner Montagne. Motion passed by a vote of seven ayes. Chair Harrison requested that David Reisman, Executive Director, and Natalia L. Ashley, General Counsel, schedule a date for a working group at the Ethics Commission along with any commissioners wishing to attend as long as there is no quorum. **Staff proposed draft Option Two on Agenda Item 12 to be published in the Texas Register for comment.**

Agenda Item 13: Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rule § 34.11 (Attribution of Expenditure to More Than One Person; Reimbursement of Lobby Expenditure), relating to the reporting of a lobby expenditure attributed to more than one person.

Natalia L. Ashley, General Counsel, briefed the commission on this agenda item. Jack Gullahorn, Attorney, Professional Advocacy Association of Texas, spoke before the commission. Motion by Commissioner Taylor to publish for public comment in the Texas Register the staff proposed rule Exhibit A on Agenda Item 13; second by Commissioner Davenport. Motion passed by a vote of seven ayes. **Staff proposed rule Exhibit A on Agenda Item 13 to be published in the Texas Register for comment.**

Agenda Item 14: Public discussion and possible action on the adoption and publication in the Texas Register of an amendment to Ethics Commission Rule § 20.13(d) (Out-of-State Committees) and Ethics Commission Rule § 20.29 (Information About Out-of-State Committees), relating to reporting requirements for out-of-state committees.

Natalia L. Ashley, General Counsel, briefed the commission on this agenda item. Motion by Commissioner Davenport to adopt and publish in the Texas Register Ethics Commission Rules §§ 20.13 and 20.29 on Agenda Item 14; second by Vice Chair Fischer. Motion passed by a vote of seven ayes. **Ethics Commission Rules §§ 20.13 and 20.29 are adopted.**

Agenda Item 15: Public discussion and possible action on the adoption and publication in the Texas Register of an amendment to Ethics Commission Rule § 20.435 (Telegram Reports by Certain General-Purpose Committees), relating to the reporting requirements if the committee is involved in an election.

Natalia L. Ashley, General Counsel, briefed the commission on this agenda item. Motion by Commissioner Mendoza to adopt and publish in the Texas Register Ethics Commission Rule § 20.435; second by Commissioner Montagne. Motion passed by a vote of seven ayes. **Ethics Commission Rule § 20.435 is adopted.**

Meeting recessed 10:40 a.m. to 10:56 a.m.

Agenda Item 18: Public discussion and possible action on the adoption and publication in the Texas Register of rules implementing conflict of interest provisions of H.B. 3560, 80th Legislature, Regular Session, that relate to conflict of interest requirements for the chief clerk or any other employee of the Comptroller.

David A. Reisman, Executive Director, briefed the commission on this agenda item. Martin Hubert, Deputy Comptroller with the Texas Comptroller of Public Accounts, spoke before the commission. Andrew Homer, Director of Government Relations, Texas Public Employees Association, spoke before the commission. Motion by Vice Chair Fischer to create a *de minimis* exception that states that section 2155.13 of the Government Code does not apply to the ownership of stock, the value of which does not exceed \$25,000 or 5 percent, whichever is lower, in any one company or ownership of shares in a publicly traded mutual fund or similar invested vehicle on which the person does not exercise any discretion regarding the investment of the assets of the funds or other investment vehicle; second by Commissioner Graham. Motion failed by a vote of five ayes. Commissioners Montagne and Taylor voted no. Motion by Commissioner Montagne not to exceed \$50,000 or 5 percent whichever is lower; second by Commissioner Taylor. Motion failed by a vote of three ayes. Vice Chair Fischer, Commissioners Davenport, Graham and Mendoza voted no. Motion by Commissioner Montagne not to exceed \$25,000 or 5 percent whichever is lower; second by Vice Chair Fischer. Motion passed by a vote of six ayes. Commissioner Taylor voted no. **Amended Chapter 45 rules to be published in the Texas Register for comment.**

Agenda Item 16: Public discussion and possible action on the adoption and publication in the Texas Register of rules implementing conflict of interest provisions of H.B. 3560, 80th Legislature, Regular Session, that relate to the Texas Facilities Commission.

David A. Reisman, Executive Director, briefed the commission on this agenda item. Motion by Vice Chair Fischer to adopt the *de minimis* rule of \$25,000 or 5 percent, whichever is lower; second by Commissioner Davenport. Motion passed by a vote of seven ayes. ***De minimis* rule of \$25,000 or 5 percent, whichever is lower, is adopted.**

Agenda Item 17: Public discussion and possible action on the adoption and publication in the Texas Register of rules implementing conflict of interest provisions of H.B. 3560, 80th Legislature, Regular Session, that would require the Comptroller to identify to the Texas Ethics Commission a contribution from a vendor.

David A. Reisman, Executive Director, briefed the commission on this agenda item. Mr. Reisman thanked Martin A. Hubert, Deputy Comptroller with the Texas Comptroller of Public Accounts, and Ashley Harden, Special Counsel with the Comptroller of Public Accounts, for their assistance. Ed Shack spoke before the commission. Motion by Vice Chair Fischer to adopt the rules implementing conflict of interest provisions of H.B. 3560, 80th Legislature, Regular Session, that would require the Comptroller to identify to the Texas Ethics Commission a contribution from a vendor, as amended; second by Commissioner Davenport. Motion passed by a vote of seven ayes. **Ethics Commission Rule § 20.220 is adopted as amended.**

The next Ethics Commission meeting is scheduled for April 3 and 4, 2008.

Agenda Item 19: Adjourn.

Commission meeting adjourned by unanimous consent.