

**MINUTES**  
**COMMISSION MEETING**  
**OPEN SESSION**

**November 20, 2013**

The meeting was called to order by Chairman Phillip Florence, Jr., at 9:44 a.m. Other members present were Vice Chair E. Kay Biermann Brohl, Jonathan H. Burnett, Dr. Richard H. Fitzgerald, and G. Carlton Manley.

The news media was duly notified.

Staff present:

Mr. Herbert R. Hayden, Jr., Executive Director  
Ms. Cathy L. Hazelwood, Deputy Director/General Counsel  
Mr. Daniel F. Choate, Investigator  
Mr. Jimmy Bagnall, Investigator  
Mrs. Ami Franklin, Assistant Director, Administration  
Miss Kristin M. Smith, Administrative Coordinator  
Mrs. Karen A. Wiggins, Court Reporter

Others present:

Aaron J. Kosloski, Esquire

Chairman Florence welcomed everyone and reminded the Commissioners to use the microphones when speaking. It was noted that Mr. Manley might have to leave early, so the decision was made to take up approval of the Minutes and then take up any motions and advisory opinions out of order for consideration.

## **MINUTES**

Motion was made by Vice Chair Brohl, seconded by Dr. Fitzgerald, to accept the Minutes as presented. Chairman Florence asked for any discussion or opposition. There being none, the motion carried with no opposition to approve the Open and Executive Session Minutes from the September 18, 2013 Commission meeting.

## **POINT OF ORDER**

### **Consolidated Motion to Dismiss**

**C2014-010 SEC vs. Aaron J. Kozloski**

**C2014-011 SEC vs. American College of Obstetricians & Gynecologists SC Section**

Chairman Florence presented this matter. Ms. Hazelwood gave an opening statement, noting that law requires persons registered as a lobbyist must file disclosure reports, and Mr. Kozloski failed to file a lobbyist's disclosure report for the American College of Obstetricians & Gynecologists SC Section (ACOG). Mr. Kozloski then gave a lengthy opening statement and history of his career, asking for a dismissal of the complaint because (1) he did not fit the definition of a lobbyist since he had no direct contact with any covered person on any public matter; (2) he received no money and no money was paid out; (3) that, although he did register as a lobbyist, it was a favor for his wife and the Lobbyist Principal; (4) he found gaps in the statute; (5) he had problems with the Debtors' list on the Commission's website--suggesting the Commission revise the procedure to wait until the person has been adjudicated before listing any names; (6) related the events of his wife's passing; and (7) apologized for the chain of events that led up to this. Chairman Florence then asked if he registered as a lobbyist for ACOG. Mr. Kozloski responded yes. There was considerable discussion about the Commission having no way of knowing if someone doesn't lobby, when in fact they did register to lobby, hence requiring disclosure reports. Mr. Kozloski agreed that the Commission has to work with what they have in the system, although he said his matter was unique. Vice Chair Brohl asked if he had registered before, why register again but then not file any reports? Mr. Kozloski said he did get paid the first time, and out of some caution did register again, but afterwards probably should not have registered, erred on the side of caution. Chairman Florence asked for any further comments. Ms. Hazelwood responded that system says Mr. Kozloski registered, and staff can't discern looking at a file if someone lobbied or not--the registration triggered the requirement of a disclosure, and to say at this late date that there was no lobbying is very problematic. Chairman Florence asked for the current penalty amount. Miss. Smith responded \$1,800. Ms. Hazelwood noted that the motion to dismiss was the only matter before the Commission at this time. Dr. Fitzgerald asked for clarification of the two statutes cited in this matter (8-13-320 and 2-17-10; "12-17-10" is a typo) for a definition of a lobbyist. Ms. Hazelwood responded that there was a typo in the Motion to Dismiss and then defined the two different statutes concerning lobbyists. Chairman Florence asked for

any further discussion. Mr. Kosloski asked to give a closing statement saying he found a gap that applies here in this matter; that \$1,800 is a lot of money; and noted his strong feelings that the definition of a lobbyist does not apply here for him. Mr. Burnett noted that the Commission only knows the information that it has on hand, and if not informed of any changes, how is the Commission to know or correct the information? Mr. Kosloski responded he wished he hadn't registered. Chairman Florence asked for further discussion, and there being none, thanked Mr. Kosloski and stated that the Commission would take this matter under advisement and let him know what they decided.

Chairman Florence asked to take up this matter at this time. All agreed. Chairman Florence noted that (1) the definition of lobbying and (2) Mr. Kosloski's request to dismiss because he did not lobby was not reason enough to dismiss the motion. Discussion ensued as to the Commission's past history of changing laws; handling cases that were not under the Commission's jurisdiction; history of dismissing unethical issues because of the law; handling family-member definition issues; the nightmare to come for anyone who said that they didn't lobby—"the law doesn't apply to them"-- and so no disclosure report requirements. Mr. Manley then made a motion, seconded by Mr. Burnett, to deny the motion to dismiss. Dr. Fitzgerald opposed the motion. Mr. Manley made a request that staff soften the blow when Mr. Kosloski is notified about the denial. Staff responded they would, but reminded the Commissioners that when a person registers to lobby, they have reports to file. Dr. Fitzgerald wanted to go on record about his opposition as to the definition of the two statutes and asked to clarify the difference and clear this up because this will come up again. Chairman Florence reiterated that if you register, you report, at the Ethics Commission. Dr. Fitzgerald asked how to bring changes in the lobbying laws before the Legislature for consideration. Staff responded they were working on it. Mr. Burnett made a request that a person make a self-proclamation, saying "I am a lobbyist." Further discussion ensued as to the procedure for registering and filing reports as a lobbyist. Staff responded. Chairman Florence asked for further discussion. There being none, the motion carried.

### **ADVISORY OPINION**

AO2014-001

Chairman Florence presented this matter for consideration. Ms. Hazelwood gave a history on this matter which led to the request for an Advisory Opinion: a complaint concerning the use of a candidate's personal vehicle while campaigning. The Commissioners reviewed the proposed Advisory Opinion. Mr. Manley made a motion, seconded by Mr. Burnett, to accept the Advisory Opinion. Chairman Florence asked for any discussion or opposition. There being none, the motion carried.

## **APPEALS**

Mr. Hayden asked to take up the Appeals and reminded the Commissioners of the policy that staff has provided copies of a summary of each individual's background, information on the penalties and staff recommendation, copies of the letters of appeals from the individuals, and then any supportive documentation and correspondence that may be applicable to the case. The appeal statement is in writing, staff recommendation is in writing, and unless there are questions, there will be no presentation or verbal recommendation.

### **Larry Holman**

Chairman Florence presented this matter. Chairman Florence provided additional documentation from Mr. Holman. Documentation was reviewed. Mr. Hayden noted that there was a penalty reduction from \$1,000 to \$200. Discussion ensued. Mr. Manley made a motion, seconded by Mr. Burnett, to deny the appeal. Chairman Florence asked for further discussion or opposition. There being none, the motion carried.

## **OFFICE OPERATIONS**

### **Budget 2013/2014**

Mr. Hayden directed everyone to the green folder for information on the budget for the fiscal year July 1 through November 19, 2013, noting that everything was in line and nothing different than what is normally presented. Discussion ensued as to carry forward money, appropriated money, commitments, ear marked money, payment of classified employees/Mr. Hayden's salary, and sources of income. Further discussion ensued as to money left for balance of fiscal year vs. commitments already made for year with the new system. The Budget report was approved as presented.

### **Compliance Reports**

Mr. Hayden presented for information only the Compliance reports for September and October, 2013. Discussion ensued concerning generated funds, trending of lobbying registrations, complaints, proposed increase in lobbying fees, Rules of Conduct compliance, lack of decline in complaints with new system, collected money vs. non-levied money, and history of generating fines and fees. There being no further discussion, the Compliance reports were approved as presented.

### **Library System**

Mr. Hayden presented feedback on the proposed idea of the Commissioners using a Library computer system for holding the Commission meetings. Mr. Hayden stated that sending the Commissioners I-pads, maintaining computers, wiring, wireless equipment, and a Smart Board would cost around \$30,000 a year. Discussion ensued as to justifying \$30,000; which agencies had a budget to do this; going forward with exploring the actual cost; and finding another alternative. Mr. Burnett requested that

staff explore the actual cost for the creation and mail out of the Commission meeting books and present something for the next Commission meeting. Mr. Hayden said staff would prepare something.

### **Legislation**

Mr. Hayden presented the following ethics legislation coming up in January when the Legislature returns for the second year of the session:

H.3945 is waiting to be taken up again.

--would require all income and benefits to be shown on future SEIs;

--the Ethics Commission would be responsible for receiving, investigating, and conducting complaints of House and Senate members, and provide a report to the respective House or Senate Ethics Committee. Dr. Fitzgerald asked what part the Commissioners would have. Mr. Hayden responded the Commissioners would not be involved.

--increase lobbying registration fees from \$100 to \$200;

--redefine "Committee" as any group whose primary purpose is to influence the outcome of an election. Discussion ensued as to hardship of getting this passed.

S.2 passed. Prevented people from being kicked off the ballot for failing to hand deliver a filed SEI at the time of signing up. There will be a push to correct language that requires all candidates to file a SEI; not just those who won, were write-ins, or petition candidates.

### **POINT OF ORDER**

Chairman Florence asked for an update on any new commissioners being added to the State Ethics Commission. Mr. Hayden responded that the Legislature reconvenes in January and some action should be taken by the House at that time. Probably March before any new Commissioners would be on board.

### **POINT OF ORDER**

Dr. Fitzgerald asked to take up a couple of matters at this time. There was no opposition. Dr. Fitzgerald asked when was the last time lobbying fees were increased. Staff responded it had been a few years ago—not last year. Dr. Fitzgerald then asked if there was any statute or guidelines for people to use who were running for an election; he is always hearing people use the phrase "I didn't know I had to." Mr. Hayden and Ms. Hazelwood responded that Title 7 is used by the State Elections Commission and people running for office. Dr. Fitzgerald then proposed that a request be made of the Elections Commission to the let Ethics Commission know when someone has petitioned to run. Staff reported that it is currently the election official's responsibility to have candidate's file the SEI. Discussion ensued about adding more work for staff, election

official, and the candidate. Staff responded that there is no one place for everybody to go to or no one requirement for everybody to file.

### **EXECUTIVE SESSION**

Chairman Florence asked to take a break at this time before going into Executive Session. All agreed.

After a break, a motion was made by Dr. Fitzgerald, seconded by Mr. Burnett, to go into Executive Session. The motion carried.

### **RETURN FROM EXECUTIVE SESSION**

Upon return from Executive Session, a motion was made by Mr. Manley, seconded by Mr. Burnett, to adopt and ratify actions taken in Executive Session. The motion carried.

### **ADJOURNMENT**

Chairman Florence asked for further discussions. There being none. A motion was made, with unanimous consent, to adjourn. The motion carried.

Respectfully submitted,

Karen A. Wiggins  
Administrative Specialist