

MINUTES
COMMISSION MEETING
OPEN SESSION

May 21, 2014

The meeting was called to order by Chairman James H. Burns at 9:32 a.m. Other members present were Vice Chair Sherri A. Lydon, Francis E. Grimball, Sandy Templeton, James I. Warren, III, Twana Burris-Alcide, Regina Hollins Lewis, Julie J. Moose, and Thomas M. Galardi.

The news media was duly notified.

Staff present:

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

Others present:

Phillip Florence, Jr., Esquire
Kay Biermann Brohl
Jeremy Borden
Bonnie Kapp
Richard Routh
Jim Carpenter, Esquire

Chairman Burns welcomed everyone, noting the press was in attendance, and reminded the members to use their microphones when speaking for the record.

RECOGNITION OF COMMISSIONERS

Chairman Burns recognized former Chairman Phillip Florence and former Vice Chair Kay Biermann Brohl, and noted that the Commission's entire staff was present for this segment of the meeting. Mr. Hayden asked Former Chairman Florence and former Vice Chair Brohl to come forward. Mrs. Brohl then presented a State Ethics Commission gavel plaque to Mr. Florence. Mr. Florence then presented a State Ethics Commission plaque to Mrs. Brohl. Each gave a statement thanking the staff for a great job and giving best wishes to the new members.

MINUTES

Motion was made by Mrs. Lewis, seconded by Mrs. Burris-Alcide, to accept the Minutes as presented. Chairman Burns 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 March 19, 2014 Commission meeting and the Special Session Minutes from the April 30, 2014 Commission meeting.

OFFICE OPERATIONS

Budget 2013/2014

Mr. Hayden directed everyone to the yellow folder for information on the budget for the fiscal year July 1, 2013, through May 19, 2014, noting that everything was in line, nothing different than what is normally presented, and highlighted some first-of-the year expenses. Discussion ensued. The Budget report was accepted as presented.

Compliance Reports

Mr. Hayden presented for information only the Compliance reports for March and April, 2014. Staff responded to clarifications on costs and decreases. The Compliance reports were accepted as presented.

POINT OF ORDER

Chairman Burns asked at this time to make a change in the Open Session Agenda. Discussion ensued. Chairman Burns then stated that the next item of business on the Open Session Agenda would be the Appeals. All agreed.

APPEALS

Mr. Hayden presented the Appeals, and explained to the new members that these appeals are individuals who failed to file SEIs and fines were levied; the process allows for them to appeal to the Executive Director; if the Executive Director denies the appeal, they can then appeal to the full Commission.

Mr. Hayden reminded the members of the current 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.

Lawrence H. Bergmann

Documentation was reviewed. Discussion ensued concerning reports that were filed prior to 2010 were filed on time, but then stopped until 2014. Clarification was given by staff as to policy and procedure for sending out the annual entity reminder letter. Mr. Grimball made a motion, seconded by Mr. Galardi, to accept staff recommendation to deny the appeal. Further discussion ensued. After no further discussions, Chairman Burns reminded everyone of the motion and second, and asked for any opposition. There being none, the motion carried on a 9-0 vote.

ADVISORY OPINION
SEC AO2014-003 Lobbying and Social Media

Ms. Hazelwood directed everyone to their yellow folder. Documentation was reviewed. Ms. Hazelwood then gave a history of New Morning Foundation's request for a definition as to what qualifies as direct lobbying via electronic/social media and what activity and communication is allowed or not allowed by the Commission without being required to register as a lobbyist.

Discussion ensued as to "posting a message" on a social media platform; lobbying definition (to employ, appoint, or retain); exceptions of lobbying or being a lobbyist; direct communication lobbying; and non-profits using Facebook and Twitter to contact legislators to oppose or support an issue. Further discussion ensued concerning the reason for the request for the opinion was aimed at legislators, and whether the opinion should go beyond that one Conclusion. Bonnie Kapp, representing the non-profit organization, New Morning Foundation, then presented her organization's concerns for the reason for their request. Questions were asked and clarification was given. Mr. Warren then proposed some additional language to go beyond Ms. Hazelwood's Conclusion. Discussion ensued as to drafting something for the Commissioners to review. After no further discussion, Chairman Burns thanked Ms. Kapp for coming, and stated that the Commission would take this matter under advisement and get back to her. All agreed for Ms. Hazelwood to revise the Conclusion and send it to the members for a vote.

POINT OF ORDER

Chairman Burns presented Ms. Hazelwood's request to move AO2014-004 to Executive Session because of some inter-relational issues in connection with another matter. Mr. Hayden added that Mr. Lord's request is for an opinion as to action that he has taken rather than asking for an opinion on some prospective matter. The Commission has always avoided issuing an

opinion as to whether or not someone did or did not violate the statute as opposed to an opinion giving guidance as to what they may do in the future and how that statute might impact that particular action that they are contemplating. Mr. Hayden added that staff decided if they were to issue an opinion, that it be a Commission opinion rather than an opinion based upon request. Questions were asked and clarification was given. Mr. Warren made a motion to go into Executive Session, but staff responded that there was time to do this after the other Open Session agenda items were completed. Discussion ensued. Mr. Warren withdrew his motion. Chairman Burns asked for further discussion or opposition. There being none, all agreed to move AO2014-004 to Executive Session.

MOTION TO DISMISS, OR SUMMARY JUDGMENT

C2013—070 Richard Routh

Chairman Burns presented this matter. Mr. Routh stated that he was not going to speak and was represented by attorney Jim Carpenter. Mr. Carpenter gave an opening statement, history of events, and then requested a dismissal or summary judgment in this matter based upon the statute. Questions were asked and clarification was given, but Mr. Carpenter was unable to answer certain questions, so Chairman Burns asked Respondent to take the stand and be sworn in. Respondent answered questions and clarified certain events. Ms. Hazelwood gave an opening statement. Discussions ensued concerning timeframe of events; use of the university; procurement conflict; agreement requirements; contracts; rent; economic interest of \$50 or more; and certain benefits without paying for it. Considerable discussion ensued, questions were asked, and clarification was given. Mr. Carpenter asked to make a closing statement. Chairman Burns responded that he wanted Mr. Carpenter to state a basis for the dismissal. Mr. Carpenter stated that Respondent Routh gave a very substantial and valuable quid pro quo to the university for what he got vs. not paying enough for it in somebody's judgment isn't against the statute. Chairman Burns asked for any further discussion. There being none, he then asked for any motion for dismissal or summary judgment. There being none, he thanked Respondent Routh and Mr. Carpenter for coming, and stated that, absent a motion, the Commission would take the matter under advisement and get back to them. Chairman Burns asked Ms. Hazelwood to prepare an order for the Commission's review, and then asked Mr. Carpenter to submit a proposed order to the Commission for consideration. Mr. Carpenter said he would have an order to Ms. Hazelwood within ten days.

POINT OF ORDER

Chairman Burns requested to do the Legislation Discussion at this time, asking that it be cut short, and then everyone would take a 10-minute break. All agreed.

DISCUSSION

Legislation

Mr. Hayden presented to the Commission a status on the current journey of H.3945 and listed any possible action that could be taken by the Legislature before going home in two weeks

at the end of this two-year session. Discussion ensued. Mr. Hayden added that all other legislation of interest to the Commission will not make it.

POINT OF ORDER

Chairman Burns asked at this time to take a break. All agreed

EXECUTIVE SESSION

A motion was made by Mr. Grimball, seconded by Mr. Warren, to go into Executive Session. The motion carried.

RETURN FROM EXECUTIVE SESSION

Upon return from Executive Session, a motion was made by Mrs. Moose, seconded by Mrs. Lewis, to adopt and ratify actions taken in Executive Session. The motion carried.

POINT OF ORDER

Chairman Burns asked the members to consider a special meeting to take up matters they did not get to. Discussion ensued as to having a June meeting. Chairman Burns stated that an e-mail would be sent to the members for their consideration.

Staff asked the members to leave their meeting book, stating that the contents would be destroyed except material needed for the next meeting.

ADJOURNMENT

Chairman Burns asked for further discussions. There being none, a motion was made by Vice Chair Lydon, seconded by Mrs. Burris-Alcide, to adjourn. The motion carried.

Respectfully submitted,

Karen A. Wiggins
Administrative Specialist