

Georgia Government Transparency and Campaign Finance Commission

200 Piedmont Avenue | Suite 1402, West Tower | Atlanta, Georgia 30334
404-463-1980 | www.ethics.georgia.gov

Regular Meeting | Friday, August 5, 2011 | 1:00 PM Commission Meeting Minutes

Location: 200 Piedmont Avenue, Suite 1514B – West Tower | Atlanta, GA 30334

PRESENT:

Commission Members:

Patrick Millsaps, Chairman

Josh Belinfante, Vice Chairman

Kevin Abernethy, Commission Member

Kent Alexander, Commission Member (via conference call)

Absent:

Hillary Stringfellow, Commission Member

Commission Staff Present:

Stacey Kalberman

Office of the Attorney General Staff Present:

Meron Dagneu, Assistant Attorney General

OPENING COMMENTS:

Chairman Millsaps addressed those present regarding the questions surrounding the term(s) he has served on the Commission and whether they amounted to more than one full term served.

Chairman Millsaps discussed the two Executive Orders that appointed him as a member of the Commission. He indicated that there was some confusion as to whether he was completing an unfinished term of a prior Commissioner regarding his first appointment. He stated that Governor Perdue did nothing wrong and is of the understanding that his appointment was true and proper. Based upon the information that was readily available it is his understanding that Governor Deal did appropriate due diligence prior to appointing him to the Commission.

Chairman Millsaps stated that the Commission has been trying for several months to get back to the work of the Commission. A legal argument could be made both ways as to whether he served a full term under Governor Perdue or not. However, he is not going to let this issue side track the exciting things that will be discussed at this meeting or the hiring a new executive director.

He went on to state that while the statute does not allow someone to serve more than one term [as a Commissioner] it specifically states that after your term is over you may serve until your successor is chosen to

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replace you. Chairman Millsaps informed Governor Deal that instead of getting into a legal distraction over length of service, the thing to do is acknowledge that he is a Governor Perdue appointee, he is holding over from his previous term and he will serve on this Commission until such time Governor Deal selects his successor. Commissioner Millsaps stated that that is the plain language of the statute and it takes this non-issue or issue off the table.

Chairman Millsaps went on to say that when people like William Perry of Common Cause call him and ask questions about the Commission the Commission appreciates their concern. If there is a legitimate issue on this Commission that needs to be addressed they appreciate members of the press and groups calling them and bringing it to their attention. Chairman Millsaps specifically thanks William Perry of Common Cause and Jim Walls for bringing this issue to his attention. He thanked Governor Deal

Chairman Millsaps went on to read the letter he addressed to Governor Deal and was given to the Governor on Wednesday, August 8, 2012.

August 3rd, 2011 to the Honorable Nathan Deal.

It has come to my attention that my reappointment to the Georgia Government Transparency and Campaign Finance Commission may not be consistent with the Ethics in Government Act. Specifically, O.C.G.A. § 21-5-4(b) provides that "members of the commission shall not serve for more than one complete term of office." My initial appointment by Governor Perdue was for a two-year term commencing on February 10, 2009. It was my understanding I was filling the unexpired term of Mr. Rusty Ross, who Governor Perdue appointed. Under those facts, my initial two-year appointment would not be for a "complete term of office," thus allowing me to serve a complete term upon your appointment of me in February of this year. [Commissioner Millsaps interjected that the picture he has on is Facebook page is of that appointment] I have only recently learned that Mr. Ross resigned before he took the oath of office as required by law. Consequently, while he was appointed by Governor Perdue, there is a reasonable argument that he was not "qualified" as the statute requires.

Additionally, in reviewing this matter, I found a copy of the actual Executive Order appointing me which was signed by Governor Perdue. Despite the fact that I believed that I was replacing Mr. Ross, the Order states that I was succeeding, "the Honorable Emmett Bowers, whose term expired February 5, 2007." Based on this documentation, regardless of my previous understanding, it appears that I served a "complete term of office" under Governor Perdue's appointment.

Based on this information, I now believe that I am now serving past my term, which ended in February 2011. There is nothing inappropriate about my temporary continued service on the Commission in that the law allows me to do so until my successor is appointed and qualified. O.C.G.A. § 21-5-4(b). I am happy to remain on the Commission until such time as you have appointed my successor.

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It was a distinct honor that you would select me for continued service on the Commission as I believe it has a critical and important function in our state government. Please know that Commissioner Abernathy, Commissioner Alexander, Commissioner Belinfante and Commissioner Stringfellow are among some of the most honorable and self-sacrificing public servants with whom it has been my privilege and honor to serve. It is my hope that the citizens of Georgia know and understand what an asset these four individuals are to our state.

Thank you again for this opportunity.

Chairman Millsaps went on to say that he has simply said to Governor Deal that he can appoint his successor in his time.

REPORT OF THE HIRING COMMITTEE:

Commissioner Abernethy provided a status on the search for a new Executive Secretary.

- He has been very impressed with the quality of the applicants and feels that the Commission has good candidates to fill the role.
- A number of candidates have been contacted to have interviews with himself and Commissioner Belinfante.
- The Hiring Committee (Commissioner Abernethy and Belinfante) expect to have finalists to present to the Commission within the next few weeks. The finalists will be posted for a period of time of no less than 14 days. Then ultimately the entire Commission will make a decision on who the next Executive Secretary will be.

APPROVAL OF MEETING MINUTES:

- Approval of May 3, 2011 Commission Meeting minutes.

***Motion to approve: Vice Chairman Belinfante Seconded: Commissioner Abernethy
Carried 4-0***

- Approval of June 17, 2011 Commission Meeting minutes.

Commissioner Alexander requested a grammatical change on the June 17, 2011 minutes and add to the mention of Sheri Streicker on page three thanking her for her good work.

***Motion to amend June 17, 2011 Commission Meeting minutes as indicated by Commissioner Alexander.
Motion to amend: Commissioner Alexander Seconded: Commissioner Belinfante
Carried 4-0***

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OPERATIONS REPORT OF THE COMMISSION:

Chairman Millsaps indicated that over the past few months the Commission has been making some adjustments to its budget which resulted in some painful cuts and reallocation of resources. The elimination of the Deputy Director position will save the Commission \$122,120.00. By reducing the salary of the Executive Secretary position the Commission will save approximately \$49,700.00.

With these savings the Commission's next task was to decide the best way to use it and make our self more efficient. The Commission has had immense growing pains over the past year with added responsibilities and a lower number of staff. Chairman Millsaps stated that the staff has done a yeoman's job in keeping up with what they have been asked to do. He would venture to guess there is no finer group of people in another state agency that is willing to do what has to be done to make this job happen. They have given of themselves, personal time and the Commission appreciates them.

Chairman Millsaps turned the presentation over to Vice Chairman Belinfante.

Vice Chairman Belinfante stated that the plan, a work in progress, is as follows: two divisions will be created in the Commission (informal divisions) 1) regulator/compliance/education and 2) investigative/complaint.

Regulator/Compliance/Education Division:

- The Commission looked into how private sector companies handle their regulatory compliance legal issues for not all have in-house/general counsel. It was determined that many contract out this task. Therefore, the Commission decided to look for an outside attorney rather than bringing someone in house.
- The Commission is looking to contract out to an attorney in a private law firm who is not connected or affiliated with any matter that comes before the commission. Their job will be to analysis requests that come in via advisory opinions, questions that may be close to advisory opinions. This person will be given these requests by the Commission staff.
- Budget: Flat fee of \$25,000.00 per year.
- Because the Commission is contracting out this work it is important to recognize the limitations of the contracted attorney. They cannot provide the Commission with any kind of binding legal advice nor are we asking them to do so. Communication with the person will be subject to the Georgia Open Records Act. This is not an attorney/client relationship as it is currently recognized in the state. The attorney is there to provide advice and we hope that our advisory opinion process is a transparent one which is why the Commission has started posting the pending opinions online.
- The contracted attorney will work closely with the Education staff. The attorney will answer questions that arise from training classes.
- The contract attorney will not be speaking to the Commission auditors or the attorney's that assist the auditors. The reason for this is that the Commissioners want to encourage people to call the Commission and ask questions where there may be a lack of clarity in the law. The Commission wants those callers to be confident that in calling they are not speaking to the person who will then take that question, investigate and fine them. The Commission wants to be able to answer questions in a straight forward and open manner.

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Investigative/Complaint Division:

- Vice Chairman Belinfante stated that the outside counsel will not see the complaints filed with the Commission.
- When a complaint comes in, the Commission staff will do what it has been doing very well. They will review the complaint and make a determination as to whether the complaint is facially valid or does the complaint allege something under which we have jurisdiction. If it alleges something against a federal office holder, for example – the Commission does not regulate federal office holders so that complaint would be put in a pile that deems it lacks facial validity.
- If the complaint does have facial validity it will proceed to the Commission's singular auditor who will begin work on it.
- The Commission plans to use some of the savings from the above noted changes to double its auditing staff to two individuals. The auditors will do the necessary investigations into the complaint, discuss consent orders with the persons that come before them and they will be able to work with the Commission.
- The audit staff and others working on the complaint, when they need legal advice, for a trial period of 90 days they will turn to the Attorney General's office to assist them. Vice Chairman Belinfante stressed that this is new and not so new at the same time.
- The new aspects are that the Attorney General's office can get in earlier in the sense that our staff can go to the law department for questions of a legal nature. That has not always been the case. Vice Chairman Belinfante wanted to make very plain that the Attorney General's office will not be leading or conducting the investigations. They will be there assisting in much the same as a lawyer assists in investigations when they are not investigators themselves and they [the Attorney General's office] is not.
- Once a case gets worked up and it cannot be resolved it comes before the Commission, if there is a probable cause hearing the Attorney General's office will present such. Once again, Vice Chairman Belinfante stressed that the purpose of all this is not to have the Attorney General be an advocate on one side of the complaint or another. The purpose of the Attorney General's office is to present the facts as compiled by the Commission's auditors and let the Commission know what statutes are involved.
- From there the Commission will make a determination of probable cause. If probable cause is found the complaint will follow the Administrative Procedures Act and the Attorney General will represent the Commission as they have been doing for years and will continue to do so.
- If there is no probable cause found, the case will be dismissed as is the current practice and what the statute requires.

Beyond this new division of labor the Commission has heard that particularly during crunch times [filing periods] it became very difficult to get a hold of the Commission staff. Vice Chairman Belinfante assured that the Commission staff was answering the phones nonstop and yet despite that voicemail boxes were still full and people could not get through. Therefore, the Commission is going to hire someone to assist with phone call intake and be another live person to answer the phones, look through matters when then come and ensure they get to the right person.

The Commission also acknowledges and understands that the most important function of the Commission is the maintenance of the transparency side – the website. It is used constantly and allows people to see that Georgia is a transparency state. It allows individuals to find out quickly what people [filers with the Commission] are doing. The Commission staff assigned to the website are doing an incredible job. However, the Commission

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also recognizes that some of the hardware is becoming dated and with increases in paper filings as a result of legislation additional resources will need to be spent in IT. The Commission continues to recognize that IT is one of the most critical functions at the Commission and the new plan will allow it to do these things.

Commissioner Abernethy commented that the goal of the Commission is to further the education of the public and the Commission is here to help.

Chairman Millsaps opened the floor for public comment but stipulated that comments should be about the plan set forth and that topic only.

Public Comment 1: Georgia Anderson

- Mr. Anderson referenced O.C.G.A §21-5-5. He went on to indicate that the Governor, House Speaker and others want the Commission to be totally impotent and unable to handle all that has been thrown at it.
- Mr. Anderson indicated that the Governor has an emergency fund that could be used to fund the Commission and questioned whether the Governor wants to fund it [the Commission].
- Regarding late filing fees, Mr. Anderson indicated that the Commission should enforce the filing fees and let the public know that these public servants [late filers] are not following the law. The Commission should not waive off the fees. He also stated that it was difficult for the Commission to enforce the law now that the entire state is coming [filing] with it.

Public Comment 2: William Perry, Executive Director of Common Cause Georgia

- Mr. Perry indicated that the plan as outlined seems to be a step in the right direction in dealing with the situation of the Commission. The Commission is underfunded and that is forcing this situation. This [plan] seems to be the best way to handle the situation at this time; however, final judgment will be reserved until a finalized plan is reviewed.
- Mr. Perry put forth the following items for the Commission's considerations and clarification:
- Tracking the legal time it take to respond to advisory opinions and other legal issues to be able to determine what how much time it will take a contract attorney to handle those items.
- Who would assume the role of what use to be an investigator under the new system? Would it be the Commission auditor, the Attorney General or a shared responsibility between both agencies?
- Mr. Perry requested clarity on what happens after a probable cause hearing. Who would takes on the case presenter's role?
- Mr. Perry requested that the Commission respond to his questions in writing.

Chairman Millsaps indicated the proposed operational changes are a work in progress and welcomed ideas from Mr. Perry's group and any others.

Executive Secretary Stacey Kalberman, in response to Mr. Perry's questions, asked the Commission if they would like information from the Legal Division as to how much time is spent answering daily questions from the staff and public. Chairman Millsaps indicated that the Commission will get back with her.

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ADVISORY OPINIONS:

- **Advisory Opinion 2011-05**
- Submitted by: Association of County Commissioners of Georgia (“ACCG”) and the Georgia Municipal Association (“GMA”) (collectively “Local Governments”)
- Submitted on: April 27, 2011
- Whether county and city elected officials may use county or city equipment or personnel for the limited purpose of filing required campaign contribution and personal financial disclosure reports.
- Presented by Vice Chairman Belinfante

Vice Chairman Belinfante stated that the short answer is no on the campaign contribution and yes on the financial disclosure report. The reason for that is the obligation to file campaign contribution disclosure reports fall on a campaign. County/city employees are prohibited in providing county/city time and services for campaigns. However, the obligation to file a personal financial disclosure report falls on a public officer. In the same statute that prohibits the use of county and municipal services and personnel in campaigns it does say they may use county service and personnel in furtherance of their duties as a public officer. Because the law imposes a duty on that public officer to file a personal financial disclosure form we would also say it is part of their duties.

Vice Chairman Belinfante went on to be clear about what the opinion did not say, which he indicated was as important as what it does say. The opinion does not get into the distinction of county/municipal persons working on their own time vs. county time. The Commission is working under the presumption of county time. The opinion does not get into whether counties or cities have different policies that may be stricter than the Ethics in Government Act, which they are authorized to do by law.

Vice Chairman Belinfante went on to state that the Commission has been asked about why it has to read the law strictly for it received prior criticism for such. The Commission is entitled to make rules on electronic filings. Because the personal financial disclosure reports and the campaign contribution disclosure reports are suggested and encouraged to be filed electronically there is a questions as to whether the Commission has rule making authority to address this presented question by rule as opposed to an advisory opinion. At this stage, Vice Chairman Belinfante stated that the Commission is not prepared to promulgate a rule on this however there is a provision in the Georgia code, the Administrative Procedures Act, where persons can petition the Commission to make a rule. He is of the understanding that is being contemplated. The Commission does not have that request before it now; however, if it is submitted the Commissions hands are tied and it has to follow what the statute says.

Chairman Millsaps offered the floor to the requestors of the advisory opinion for comment.

Susan Moore of GMA thanked the Commission for taking their request seriously. She indicated that many of GMA and ACCG’s members are not career politicians, but regular folks. Some are not computer savvy as people in other areas but they are the heart and soul local of local government. GMA/ACCG appreciates the deliberative tone of the opinion which shows how seriously the Commission took their question.

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The Commission can expect that there will probably be a petition for a rule in this matter simply to make it very clear to those that are going to be impacted by it. Ms. Moore also introduced Kelly Pritchard from ACCG.

Motion to adopt Advisory Opinion 2011-05

Motion made by: Commissioner Abernethy

Seconded by: Commissioner Alexander

Carried 4-0

- **Advisory Opinion 2011-06**

- Submitted by: Trip Martin

- Submitted on: May 11, 2011

- Question 1. Whether or not the wearing of a lobbyist badge is required in facilities rented and leased, as well as owned, by the state government.

- Question 2. Whether or not a registered lobbyist who is serving as a member of a state agency board, commission, department, or authority is required to wear and display their lobbyist badge while serving on that state agency board, commission, department, or authority in a government building.

- Presented by Commissioner Abernethy

Commissioner Abernethy indicated that the Commission is held to the strict text of the Ethics Act which is O.C.G.A. § 21-5-6(a)(8) and that statutory language is bolstered by a recent Georgia Court of Appeals Opinion, also Barnett v. Farmer, 308 Ga. App. 358, 361 (Ga. Ct. App. 2011).

The Ethics Act sets forth a shell requirement for when a badge has to be worn by a lobbyist. The word shell “s h e l l” in statutory language is another way of saying a mandatory requirement. So, a lobbyist has a mandatory duty to wear his/her badge when he/she is engaging in lobbying. Therefore, if a lobbyist is lobbying in a government building, owned, rented or leased or otherwise, that lobbyist has to wear his/her badge. If the lobbyist is not engaging in lobbying, but in some other activity, that lobbyist does not have to wear his/her badge.

Motion to adopt Advisory Opinion 2011-6

Motion made by: Commissioner Alexander

Seconded by: Chairman Millsaps

Carried 3 AYE; 1 ABSTAIN (Vice Chairman Belinfante abstained)

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CONSENT ORDERS:

In the Matter of Sharon Barnes-Sutton, Respondent
2008-0067
Presented by Meron Dagnew, Assistant Attorney General

Background:

- Respondent failed to file four campaign contribution disclosure reports in 2006 during her unsuccessful campaign for the general assembly.
- Respondent filed to file campaign contribution disclosure reports in 2008 during her successful campaign for Dekalb Commissioner
- Respondent has filed all outstanding reports and paid applicable late and non-filing fees

Settlement:

Respondent has agreed to a \$2,500.00 civil penalty under a 10 month payment schedule and agrees to a cease and desist order from any future violation of the Campaign Finance Act.

Tanya Clark, Esq. represents the Respondent and attended the meeting via conference call.

Chairman Millsaps asked Ms. Clark if she had the opportunity to review the consent order and it is in fact the agreement she made with the Attorney General's office.

Ms. Clark responded in the affirmative and indicated that her client also had an opportunity to review it and the consent order does reflect the negotiations.

Motion to accept Consent Order In the Matter of Sharon Barnes-Sutton case number 2008-0067
Motion made by: Chairman Millsaps Seconded by: Vice Chairman Belinfante
Carried 4-0

In the Matter of John Lunsford, Respondent
2008-0006PC
Presented by Meron Dagnew, Assistant Attorney General

Background:

- Respondent failed to file one campaign contribution disclosure report due September 30, 2006.
- Respondent failed to file his 2005 and 2006 personal financial disclosure reports with the Commission. Respondent indicated that he mistakenly filed those reports locally in Henry County.
- Respondent has since filed all the required reports and paid all late fees.

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Settlement:

Respondent has agreed to a \$300.00 civil penalty to be paid within 90 days and agrees to a cease and desist order from any future violation of the Campaign Finance Act.

Doug Chalmers, Esq. represents the Respondent and was present at the meeting. Chairman Millsaps asked Mr. Chalmers if he had reviewed the order and if it reflected the agreement with the Attorney General's office. Mr. Chalmers responded in the affirmative.

Motion to accept Consent Order In the Matter of John Lunsford, case number 2008-0006PC

Motion made by: Chairman Millsaps Seconded by: Commissioner Abernethy

Carried 4-0

In the Matter of James W. Neal, Jr., Respondent

2007-0011

Presented by Meron Dagneu, Assistant Attorney General

Background:

- Respondent failed to timely file his 2006 personal financial disclosure statement.
- Respondent failed to list a fiduciary position on his 2007 personal financial disclosure statement.
- Respondent has addressed the issues and corrected the applicable filing.

Settlement:

Respondent has agreed to a \$400.00 civil penalty and an addition \$500.00 in late fees to be paid within 90 days and agrees to a cease and desist order from any future violation of the Campaign Finance Act.

Doug Chalmers, Esq. represents the Respondent and was present at the meeting. Chairman Millsaps asked Mr. Chalmers if he had reviewed the order and if it reflected the agreement with the Attorney General's office. Mr. Chalmers responded in the affirmative.

Motion to accept Consent Order In the Matter of James W. Neal, Jr., case number 2007-0011

Motion made by: Chairman Millsaps Seconded by: Commissioner Abernethy

Carried 4-0

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In the Matter of Stan Watson, Respondent

2008-0045

Presented by Meron Dagneu, Assistant Attorney General

Background:

- While Respondent was a member of the General Assembly he accepted contributions during the legislative session which is prohibited under O.C.G.A. § 21-5-35(a).
- Specifically, Respondent held a fundraiser for his campaign as Dekalb CEO and accepted contributions totaling \$331.00.
- His 2008 campaign contribution disclosure reports also show five contributions which were received on January 14, 2008, which was the first day of the legislative session.

Settlement:

Respondent has agreed to a \$1,500.00 civil penalty to be paid in 10 monthly installments and agrees to a cease and desist order from any future violation of the Campaign Finance Act. Respondent has signed the consent order.

Respondent is not represented by an attorney and was unable to attend the meeting.

Motion to approve Consent Order In the Matter of Stan Watson, case number 2008-0045

Motion made by: Chairman Millsaps Seconded by: Commissioner Abernethy

Carried 4-0

OTHER BUSINESS:

Public Comments:

Chairman Millsaps opened the floor to public comments.

Comments were made by the following individual:

George Anderson, Ethics in Government Group.

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Motion to adjourn made by Chairman Millsaps

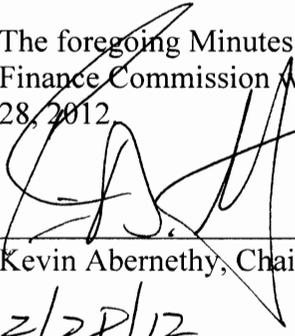
Seconded by: Commissioner Abernethy

Carried 4-0

Meeting was adjourned at approximately 2:13 PM.

Official Minutes Statement

The foregoing Minutes for the August 5, 2011 meeting of the Georgia Government Transparency and Campaign Finance Commission were approved and adopted by the Commission at the Commission's meeting on February 28, 2012.



Kevin Abernethy, Chair

2/28/12

Date



Holly LaBerge, Executive Secretary

2.28.12

Date