

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 | Tuesday, February 28, 2012 | 10:00 AM

Commission Meeting Minutes

Location: 200 Piedmont Avenue SE, Suite 1402 – West Tower, Atlanta, GA 30334

PRESENT:

Commission Members:

Kevin Abernethy, Chair
Hillary Stringfellow, Vice Chair
Kent Alexander, Commission Member
Heath Garrett, Commission Member
Dennis Cathey, Commission Member

Commission Staff Present:

Holly LaBerge, Executive Secretary

Office of the Attorney General Staff Present:

Meron Dagneu, Assistant Attorney General

OPENING COMMENTS:

- Chair Abernethy opened the meeting at 10:03 AM
- Chair Abernethy welcomed the new members of the Commission: Commissioner Garrett and Commissioner Cathey.
 - Commissioner Garrett has tremendous government experience at both the state and federal level.
 - Commissioner Cathey is a long serving and distinguished trial lawyer from northeast Georgia.
- Chair Abernethy read a resolution of service appreciation for former Commission Member and Chairman Patrick Millsaps and Commissioner B. Chan Caudell.

Request for a motion to adopt resolution for Patrick Millsaps made by Chair Abernethy.

Motion made by: Vice Chair Stringfellow

Seconded by: Commissioner Alexander

Carried 5-0

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*Request for a motion to adopt resolution for B. Chan Caudell made by Chair Abernethy.
Motion made by: Commissioner Cathey
Seconded by: Vice Chair Stringfellow
Carried 5-0*

APPROVAL OF MEETING MINUTES:

Chair Abernethy corrected the spelling of shell to shall on page 8 of the December 16, 2011 meeting minutes.

*Request for a motion to approve meeting minutes of May 3, 2011, June 17, 2011, August 5, 2011, August 26, 2011, November 4, 2011 and December 16, 2011 made by Chair Abernethy.
Motion made by: Commissioner Alexander
Seconded by: Vice Chair Stringfellow
Carried 5-0*

ADVISORY OPINION:

Advisory Opinion 2011-08

- Submitted by Robert S. Highsmith, Jr. of Holland & Knight
- Submitted: September 27, 2011
- Whether an employer corporation and an incorporated employee-sponsored political action committee ("PAC"), that are not parent or subsidiary business entities to each other, are unaffiliated so that it would be permissible for the two entities to each make maximum contributions to the same candidate under O.C.G.A. § 21-5-41(c).
- Presented by Jonathan Hawkins

Mr. Hawkins stated in his presentation to the Commission that Mr. Highsmith presented a three part test that if those three conditions were met that the employer corporation and the employee sponsored political action committee (PAC) would be unaffiliated so that each could contribute the maximum. Mr. Highsmith's three part test is as follows:

1. If the employer corporation has different directors and officers than the incorporated employee sponsored PAC.
2. Neither entity pays the administrative fees for or contributes to the other entity in any way.
3. The directors and officers for each entity lack authority concerning the disposition of funds by the other entity.

The Georgia Government Transparency and Campaign Finance Act discusses affiliated corporations and when corporations or entities that are affiliated you combine them and aggregate the total of what they have contributed and count that amount toward the maximum contribution amount that may be given to a campaign. The Act defines affiliated corporation at length; however, for today's purposes the main prongs reviewed are

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affiliated corporations that have the same or common ownership or control, or there is control of one business entity by the other.

Mr. Hawkins indicated that the three conditions put forward by Mr. Highsmith probably are sufficient to show that there is no common ownership between the entities. The more troubling issue is whether one could control the other. That situation is something Mr. Hawkins' does not think could be answered with an advisory opinion for there are probably an infinite amount of ways an employer could possibly control an employee sponsored PAC. Obviously an employer can fire an employee, not give them a raise, demote them, etc. There are any number of ways and employer, if so desired, could put some sort of pressure on an employee sponsored PAC even though on the books it looks like it has different ownership and varying directors and officers. It is Mr. Hawkins' opinion that that is really the main issues. There is no way for the Commission to set a bright line rule on what is control and what is not control. For that reason, Mr. Hawkins' concluded that if the three conditions [as set forth by Mr. Highsmith] and employer corporation has not incurred control over the employee sponsored PAC then the two entities could each contribute the maximum amount to any single candidate or campaign.

Commissioner Alexander expressed two concerns about the opinion

1. The employee piece: Implicit, not just explicit, pressure.
2. The employee piece: The loophole that allows for an employer to effectively contribute twice.

Commissioner Alexander expressed his concern for what appears to have happened in that the legislature passed a statute looking to limit the amount of contributions an employer can make. If the employer effectively has an alter ego that defeats the purpose.

Commissioner Alexander asked for the Attorney General's office perspective on the precedent, what the background is and might it be a concern beyond the Commission's ken or it might be something we should be addressing.

Meron Dagnew, Assistant Attorney General, stated that regarding Attorney General opinions related to regulated entities [which she has read but at this time is not prepared to cite at this time] believes that the opinion prepared by Mr. Hawkins addresses the concerns that there is a separation [between employer and employee PAC] but there is a case by case analysis that is required in each situation. But the standards that are set down for separation between an employer corporation that is not affiliated with the employee entity [PAC] is correct and she stated she believes Mr. Hawkins analysis is correct.

Commissioner Alexander, in reference to Mr. Hawkins' comments about the issue of control, questioned whether that would simply be direct control or could it be indirect control?

Ms. Dagnew responded that it could possibly be indirect control in the sense that it could show up insufficient relation.

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Ms. Dagnew questioned Mr. Mr. Hawkins if he reviewed AG opinions in this matter and he indicated he has not. Ms. Dagnew went on to state that she did not think that [after Mr. Hawkins reviewed AG opinions] Mr. Hawkins would arrive at a conclusion that is much different than the current one.

Mr. Hawkins stated that the new draft will address the concerns he raised. The control issue is a case by case analysis and there is no way one could make a bright line rule due to the infinite number of possible conditions where implicit control could be exerted, as mentioned early by Commissioner Alexander.

Ms. Dagnew suggested to the Commission that it may want to table this opinion until Mr. Hawkins and herself have reviewed the various AG opinions and determine if any additions or changes to the draft advisory opinion are warranted.

Commissioner Alexander stated that he feels this is an important opinion the Commission is issuing for it really could change the scope of political contributions and political action committee activity in the state. He went on to express his personal curiosity about the precedent on this and also if the Commission goes with this opinion ultimately whether the Commission could say, that on the fourth prong of the litmus test, that the employer corporation does not exert direct or indirect control might be a good addition.

Mr. Robert Highsmith, requestor of the advisory opinion, stated that he agrees with the draft advisory opinion and realizes that there will be some case by case analysis. Clearly an employer cannot tell an employee that is under that person's control that is also chairing the employee sponsored PAC what to do. That would be a violation of the common control provision and could be addressed in the advisory opinion.

Commissioner Cathy stated that he thinks what the Commission is looking to do is to give a framework as to how the game is played and the Commission does not what to dictate each and every move. He analogized it as to controlling the time, manner and method, which is the test, but each case stands on its own as to whether somebody is in control or not. The indirect gives the flexibility, if the Commission adds it, to allow for something, other than somebody saying they do not exert any control. It is Commissioner Cathey's opinion that someone needs to have the ability to look beyond that. The simple word "indirect" would do that, which is not much of a change; however, it would allow the flexibility.

Mr. Chalmers commented that on the second draft of the advisory opinion he agrees with Mr. Highsmith. On the addition of the direct or indirect he would suggest that if the Commission adds the word indirect the Commission is exceeding the scope of the statute. The statue on common ownership and controls specifically says common ownership or control; it does not say common ownership or direct or indirect control. There are circumstances in the Act where it specifically says direct or indirect, for example there is language talking about direct or indirect contributions, so he would think that if the Commission adds indirect control to the advisory opinion the Commission is expanding the scope of the statute.

Commission Alexander questioned Mr. Chalmers if there was language that talks about direct or indirect control within the statute for it seems that Mr. Chalmers is talking about direct and indirect in another realm.

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Mr. Chalmers responded that he was talking about direct or indirect in another realm. He went on to state that his point is that the legislature knew when they wanted to include direct or indirect in the statute and if they had wanted to say direct or indirect control they would have included that language in this particular area.

Commissioner Alexander asked if there was a definition of control in the statute. The response from those in attendance of the meeting was it is not a defined term. Commissioner Alexander stated, based on the response to his question, that control is an undefined term. Mr. Chalmers agreed that it is an undefined term.

Mr. Chalmers went on to say that under the Ethics in Government Act as interpreted by the courts, it must be construed as narrowly as possible. So, adding the word indirect within an advisory opinion when control would have to be interpreted in as narrow a manner as possible would be expanding the scope of the statute.

Mr. Highsmith commented that the Commission needs to remember that these are employee sponsored PACs. That under state and federal criminal law contributions to them [candidates or campaigns] cannot be coerced, they must be voluntary. Completely independent of whatever the Commission advises in today's opinion. What should not come as a surprise is that in employee sponsored PACS very frequently their goals will be the same as the corporation's. This is not labor verses management where the goals are different. Very frequently, in fact most of the time, the political goals of the employee sponsored PAC are going to be very much in line with the political goals of the corporation itself. So, Mr. Highsmith's fear about adding the word indirect would be to open up for lots of very unclear potential future interpretation, which we are trying to avoid, when you have corporation say our business goals would be advanced by electing a candidate that is in favor of less regulation, for an example and to be simple about it, and if the employee sponsored PAC says they think that too because we like our jobs, bonuses and want the company we work for to be successful, would it be indirect control if the corporation makes some sort of public statement in support of this candidate followed by a contribution by an employee sponsored PAC. Mr. Highsmith indicated that he knows this Commission would not but he would hate for a future Commission to decide that that somehow constituted indirect control when we really should not fear an employee sponsored PAC of which every nickel of which must have been voluntarily contributed to that PAC and participating in the political process in the same way that the corporation is using corporate funds.

Commissioner Alexander asked if there were currently a number of employee sponsored PACs in Georgia. Mr. Highsmith responded that every PAC organized under the Federal Election Campaign Act is by definition employee sponsored. Federal PACs can have administrative support provided by the employer corporation that is traditionally something that employee sponsored PACs that give only in state races do not do.

Commissioner Alexander asked this question to get a sense of how much this advisory opinion could change the game as far as elections and campaign finance in Georgia and it sounds like the effect would be considerable. Mr. Highsmith went on to state that he was unaware if there were a lot of corporations that have employee sponsored PACs that are contributing in state races and corporation that are in the habit of making maximum contributions to candidates themselves.

Mr. Highsmith went on to comment that this situation is not like, for example, Citizens United, which changed significantly the understanding of how corporations participate in federal election process.

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Commissioner Alexander stated that it sounds like the net net that under state law or advisory opinion an employee PAC and the company would equal two separate contributions. So, as far as contributions going to campaigns under the banner of the company's name, even if they are unrelated, could double.

Commissioner Alexander stated that the obverse of that, an employer could be faced with a situation they feel like they have to contribute for the corporation and then there might be implicit pressure to have an employee PAC because their competitors have employee PACs and their competitors are effectively giving double. Commissioner Alexander stated that he is playing devil's advocate a bit to flesh out what the effect of this ruling would be.

Mr. Highsmith responded that he understood and he would urge the Commission to keep in mind the very strict rules that are enforced with not civil or administrative but criminal penalties for the coercion of political giving. It is Mr. Highsmith's belief criminal penalties significantly mitigate the danger that corporate employers using this opinion to force their employees to do things that they are not otherwise inclined to. Commissioner Alexander stated that he was thinking more about the elected officials and the expectation on that end.

Mr. Highsmith stated that setting up an employee sponsored PAC is not easy. If there is a will among the body of employees to participate together in the political process he thinks that is something we should not fear, as long as the independence of that employee sponsored entity is maintained. He went on to state that he does not believe we should fear that the business goals of the corporation and political goals of the employees, who obviously want their employer generally speaking to succeed, that we should fear those two groups of people acting in concert.

Commissioner Garrett asked if the practical effect right now of the entities that are in this situation is are they either giving from the employee PAC or the corporation but they are not giving to both.

Mr. Highsmith responded that the reason he submitted the advisory opinion request is that most folks looking at this would have not been comfortable with both entities making the maximum contribution because of the lack of interpretation around these affiliated corporations. Mr. Highsmith went on to say that he is aware of corporations and employee sponsored PACs both giving but his advice to them is that they really should get guidance from the Commission on that practice going forward. Also, you absolutely cannot have a situation where common board members or the president of the corporation also serving as the chair of the PAC. Those sorts of obvious common control facts would render maximum contributions from each entity invalid.

Commissioner Garrett questioned would those employees that are also the chief executive officer and other officers be able to contribute to the employee sponsored PAC while also making the decisions about the corporate contributions.

Mr. Highsmith responded that as long as they are not making the decisions about the employee sponsored PAC contributions, then the answer is yes.

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Mr. Highsmith went on to comment that there will be fact intensive inquiries. For example, did the CEO tell this person who has a role in the direction of the employee PAC to do X, Y or Z. If the Commission uncovers that he does not think one would have to look to this opinion to answer the question that the contribution in question would be illegal.

Mr. Chalmers commented that this opinion actually tightens the law in a significant way. It imposes restrictions that actually have not been in place before. Mr. Highsmith submitted an advisory opinion to the Commission that said if you have these certain conditions there is no common ownership and control. If in fact there is no overlap, there are different directors and different officers from the employer and the PAC then there is no common ownership and control. This advisory opinion says "the Commission finds that an employer corporation and an incorporated employee sponsored PAC can each make maximum contributions only where that now exists". The law says that you have affiliation if there is common ownership and control. This advisory opinion now says that if you have even one director or officer in common you have necessary, as a matter of law, have common ownership and control and I think that is not what Mr. Highsmith intended in the opinion and he does not think that is the right rule. Mr. Chalmers when on to state that you could have, and historically he believes we have had, some overlap between directors and officers of an employer entity and an employee sponsored PAC. This would establish that the one commonality means necessary that they are affiliated. He thinks that we either have to adopt the approach Mr. Highsmith requested which is if these conditions exist and there is no common ownership or control or at the very least go back to simply point four of the proposed advisory opinion. Point four states there is no affiliation if the employer corporation does not exert control over the employee sponsored PAC. If there is no control then the statute is satisfied. This advisory opinion establishes three additional criteria which must be met in order to avoid a finding of common ownership and control and that is not what the statute says. For example, point two "neither entity pays the administrative fees or contributes to". What that basically means is that if the employer corporation were to pay any of the administrative fees or to make a contribution to the employee sponsored PAC as a matter of law now you would be finding that there is common ownership or control of those two entities simply by virtue of making a campaign contribution and that makes them affiliated corporations. The way the opinion is drafted actually extended the law and tightened it up significantly in ways that were not intended by the Act. For example, there has never been a finding before that if you have one officer or director in common within employer corporation and an employee PAC you necessarily had common ownership and control. This draft advisory opinion says that if you do have that they are now necessarily affiliated corporations. That is a bright line rule that is actually pretty absolute. That was not where this started off and it is actually ending in the opposite direction.

Ms. Dagnev asked Mr. Chalmers how he would define common ownership.

Mr. Chalmers responded that it is not up to us to define common ownership.

Ms. Dagnev asked if it [common ownership] is not sharing the same director.

Mr. Chalmers responded that the ownership of a non-profit organization, as a practical matter, really does not matter because they are not owned by anybody. There are not shareholders or ownership. In the non-profit context when discussion was about political action committees and non-profits one has to look at the common

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control pattern. You have to look to determine factually whether or not the entity that is the employer created corporation or business entity directed the employees whether or not to make contributions to the same candidates that the employer corporation is contributing to. This is always the way it has been done. This process started out with Mr. Highsmith requesting can we establish a bright line rule that if we have these three certain things that there is not common ownership and control. The draft advisory opinion, the second draft, says that if you do not have these three things then you necessarily have ownership and control which means you have to actually have a bright line rule that is pretty extreme. There are plenty of factual circumstances where you could have a PAC that receives a contribution from an employer corporation or where you could have a common officer or common director. What happens if one of the employees of the employee sponsored PAC happens to also serve as treasurer of the corporation. That does not necessarily establish common ownership and control. This draft of the advisory opinion says that it would as a matter of law. Mr. Chalmers stated that he thinks the Commission has to keep the law as it has been which is a factual inquiry that is questioned on a case by case basis.

Vice Chair Stringfellow asked Mr. Chalmers if he would agree that if corporations are not affiliated and there is not control that both can make maximum contributions.

Mr. Chalmers responded in the affirmative but continued to state that if there is control they are necessarily affiliated and they cannot make maximum contributions. Vice Chair Stringfellow responded in the affirmative.

Mr. Chalmers went on to comment that historically we have not found cases where there has been necessarily affiliation between an employer corporation and a PAC setup by the employees of those corporations. The entire line of cases on regulated entities establishes that they are not necessary affiliated as long as there is no financial support, no direction or control. It is a factual matter which is what the Attorney General said. Should the Commission adopt this advisory opinion, one common officer, one common director now establishes a violation of the laws as a matter of law. Mr. Chalmers stated that he did not think that is what common ownership and control means. It has to be analyzed on a case by case basis.

Commissioner Alexander made four points:

1. Thanked Mr. Highsmith on his response regarding the employee pressure portion of this issue.
2. Expressed concerns about the doubling of contributions and what could in effect be a wink and a nod new system in Georgia.
3. Expressed concern about employers feeling implicit pressure to have both contribution vehicles to be supportive and competitive.
4. Based on discussions the Commission might benefit from the Attorney General taking a closer look and even further public comment. He would be interested in what the Chamber, Common Cause or any others have to say about this for it does have fairly substantial effects on campaign finance in the state of Georgia and he wants to ensure that the Commission gets it right. The right answer might be what we have right now; however, he wants to make sure.

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Motion to table opinion response until Mr. Hawkins and the Attorney General Office address the raised issues and for further public comment.

Motion made by: Commissioner Alexander

Seconded by: Vice Chair Stringfellow

Carried 5-0

Chair Abernethy asked the Attorney General to conduct research into this matter. Ms. Dagnew responded that she will communicate with Mr. Hawkins in the matter.

The Commissioners expressed their appreciation to Mr. Highsmith and Mr. Chalmers for their comments.

CONSENT ORDERS:

In the Matter of Roberta Abdul-Salaam Case No. PC2008-0011 Presented by: Meron Dagnew, Assistant Attorney General

Presented as a Consent Order and Hardship Waiver

Ms. Dagnew presented the case to the Commission at the November 4, 2011 Commission meeting. The Commission requested additional time to review the supporting documentation to the hardship waiver, which has been provided.

The Georgia legislature is still in session and Ms. Abdul-Salaam is an active State Representative. Ms. Dagnew was unable to contact Rep. Abdul-Salaam to determine if she wanted to waive the general courtesy of immunity during that time for proceedings.

Therefore, Ms. Dagnew stated that she would err on the side of tabling this case until after the session and then present it to the Commission for their opinion on the waiver request.

Chair Abernethy questioned whether Rep. Abdul-Salaam presented any additional information since the prior meeting. Ms. Dagnew stated that she had not.

Case was tabled till the next Commission meeting that takes place after session has ended.

COMMISSION IN RECESS FROM 10:47AM TILL 11:00 AM

Motion to table In the Matter of Roberta Abdul-Salaam Case No. PC2008-0011

Motion made by: Commissioner Alexander

Seconded by: Vice Chair Stringfellow

Carried 5-0

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In the Matter of South Fulton Unincorporated, Inc.
Case No. 2007-0019
Presented by: Meron Dagnev, Assistant Attorney General

Issue:

- Case was scheduled for an administrative hearing. Prior to that mandate the Respondent, the chairperson for the committee at the time, contacted Ms. Dagnev to work out a settlement on the now defunct committee.
- South Fulton Unincorporated, Inc. (Committee) was a ballot committee that failed to register with the Commission prior to accepting contributions.
- The Committee failed to file its 15 day campaign contribution disclosure report on time. The committee did immediately file it when the case was initiated.

Conclusion:

Jennifer Pasley, former Chairperson of the Committee, entered into a consent order with a cease and desist provision. Ms. Pasley agreed to pay the sanctioned amount directly since the Committee is no longer active and has no funds.

SANCTION: \$750.00 under a 10 month installment plan.

The administrative hearing officer is waiting to see if this settlement will go through prior to rescheduling the case.

Motion to accept consent order In the matter of South Fulton Unincorporated, Inc.

Motion made by: Vice Chair Stringfellow

Seconded by: Commissioner Alexander

Carried 5-0

In the Matter of Evelyn T. Anderson
Case No. 2008-0050
Presented by: Meron Dagnev, Assistant Attorney General

Presented as a Consent Order and Hardship Waiver

Issue:

- Respondent was an unsuccessful candidate for State Senate in 2006 and also qualified in 2008.
- Respondent failed to file four campaign contribution disclosure reports due in 2006. The reports were filed upon the initiation of the case.
- Respondent has not filed the June 30, 2008 campaign contribution disclosure report after qualifying.
- Respondent failed to file personal financial disclosures reports for 2005 and 2007.
- Respondent has outstanding late fees owed of \$1,425.00.

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Conclusion:

- Respondent submitted a request for a hardship waiver which includes her income tax returns and medical documentation.
- Respondent does not have the records to file the lacking reports at this time and indicated that she is not in a medical position to file the lacking reports.
- The consent order stipulates a \$1,400.00 penalty which is waived in consideration of the Respondent's medical and financial condition.
- The Respondent is not currently a candidate for a position.

Motion to accept consent order and hardship waiver In the matter of Evelyn T. Anderson.

Motion made by: Vice Chair Stringfellow

Seconded by: Commissioner Alexander

Carried 5-0

In the Steve Davis Case No. 2012-0001PC Presented by: Elisabeth Murray-Obertein, Staff Attorney

This case was added to the original agenda.

Issue:

- Case arose from a probable cause investigation that was opened on January 20, 2012. It was, in part, from an investigation from a case that was ultimately administratively dismissed for no violation was found based on the allegations stated in the complaint. A violation was discovered, which was not based on the complaint, and this probable case was opened.
- The Respondent is a State Representative for District 109.
- The Respondent's 2009 and 2010 personal financial disclosures lacked the listing of his fiduciary positions as CEO for two additional entities, Greenwood Crest Realty, Inc. and Crest Legal Services, Inc.
- Respondent is represented by Douglas Chalmers, Jr. of Douglas Chalmers Jr. Political Law Group, A Chalmers LLC.

Conclusion of Commission Staff:

A consent order was agreed to and Respondent is to amend his financial disclosure statements to include the lacking two entities.

SANCTION: \$300.00 within 60 days

Mr. Chalmers stated that he did not disagree with anything that was said. He went on to say that he did have a few additional facts. The reason that one of the entities was not disclosed was it was a successor business. Mr. Davis ended up taking over a real estate brokerage in 2009 and was setup as a corporation. When Mr. Davis took it over as CEO he decided to change the structure to an LLC. Mr. Davis disclosed the LLC on his personal financial disclosure but did not disclose the corporation thinking that he got the business covered on his disclosure report.

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The section item is a self report situation. Mr. Davis established a corporation simply by filing paperwork with the Secretary of State with the intention to run a different business. He never actually did anything with it; it was just a shell – never anything more than the articles of incorporation filed. Technically it was in existence; technically it was a business entity. He missed that on his personal financial disclosure report.

Mr. Davis agreed to pay the civil penalty of \$100.00 per violation for a total of \$300.00.

Commissioner Garrett asked if \$100.00 per violation is the Commission standard for what he would characterize, in his words, as minor violations. Ms. Murray-Oberlein responded that the staff considered these to be minor violations, in particular that two of the violations were self reported.

Commissioner Alexander stated that it sounds like Mr. Davis did the right thing.

Motion to accept consent order In the matter of Steve Davis.

Motion made by: Commissioner Alexander

Seconded by: Commissioner Cathey

Carried 5-0

COMMISSION IN RECESS FROM 10:57 AM TILL 11:09 AM

OTHER BUSINESS:

Complaint Procedure Outline: At the request of Commissioner Stringfellow the Commission staff developed a Complaint Procedure Outline to provide an overview for the public and the new Commissioners of the process.

Elisabeth Murray-Oberlein, Staff Attorney, presented a complaint status to the Commission.

- The Commission had 133 open cases when Ms. Murray-Oberlein started December 1, 2011.
- Since December 1, 2011 the Commission has
 - Received 8 complaints of which we rejected 5 and accepted 3.
 - Administratively Dismissed 16 cases which included:
 - 10 from 2011
 - 2 from 2010
 - 2 from 2008
 - 2 from 2001

Upon a detailed investigation of these complaints it was determined that no violation, within our jurisdiction, occurred to warrant a penalty against the Respondent.

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- Complaint numbers update:
The Commission currently has 125 open complaints of which 23% or 29 complaints are with the Attorney General's office.

The Commission expressed their appreciation of the hard work Ms. Murray-Obertein has put forth. Ms. Dagnew commented that of the open cases with the Attorney General's office three to four are administrative cases – meaning cases that are either going to be consent orders to be sent to OSHA. The rest of the cases with the Attorney General are all enforcement cases – meaning they are consent orders that have been sent over [from the Commission] for enforcement actions in Superior Court. These cases [enforcement] are handled by a different division of the Attorney General's Office and not Ms. Dagnew's.

There was a breakdown provided to the Commission staff stating which cases may not be viable to pursue; the amount is too low to pursue, or things of that nature. Ms. Dagnew is still working with that division to determine the final numbers as to which cases will go forward with enforcement.

Vice Chair Stringfellow commented that the role of a Staff Attorney has made a nice dent in the Commission's work load; reworking that position and changing that role into a staff attorney. It has proven a good result.

Chair Abernethy commented that the legacy of former Vice Chairman Belinfante is alive and well.

Budget Update: Presented by Holly LaBerge, Executive Secretary

Ms. LaBerge provided and reviewed the following with the Commissioners:

Fiscal Year 2012: (from Session)

- Pages 1 through 4 of Fiscal Year 2012 Amended Budget, Governor's Recommendations. The Campaign Finance Commission is included in the Secretary of State's numbers.
- Page 3 and 4 of the Fiscal Year 2012 Amended Budget Funding Source Governor's Recommendations.
- Page 15 from the Fiscal Year 2012 Amended Budget showing Governor, House and Senate numbers. This page showed the state wide increase for the state health benefit plan for December 2011 to April 2012 and increase in funds to reflect an adjustment in telecommunications expenses.

Fiscal Year 2013: (from Session)

- Pages 1 through 4 of Fiscal Year 2013 Budget – Funding Source - Governor's Recommendations. The Campaign Finance Commission is included in the Secretary of State's numbers.
- Pages 101 through of Fiscal Year 2013 Budget, Secretary of State – Detail, Governor's Recommendations. The Commission fell on line 42.9. Also provided from the Fiscal Year 2013 Budget was a breakdown of line 42.9.
- Ms. LaBerge discussed her efforts to obtain additional funding for IT upgrades additional staff and mailing costs.

Ms. LaBerge went on to discuss/present the following items:

- Provided current budget numbers to the Commission.

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- Brought the Commission's attention to the \$8,825.00 in retained revenue that has been deposited with the Secretary of State but is lacking from the financials provided by the Secretary of State.
- Tables: Two months ago the Commission sent a requisition to order tables for the Commission's training/meeting room. The Commission was recently informed that an additional level of approval is required for the tables ordered.
- Random Audit Project: The law requires the Commission to look at every filing, for which the Commission does not have the manpower. The Commission has one auditor who is conducting a 10% random audit. The Commission will not be able to complete the 10% this year. The Auditor is also the only person that assists the Staff Attorney for conducting audits for case complaints. The Legislature is aware that the Commission is not going to hit the 10% mark. The 10% mark was self imposed because the law requires the Commission to look at all filings and we cannot do it.
- Organizational Chart: The Commissioners were provided with an updated organizational chart of the staff.
- The Commissioners were provided with a copy of the Georgia Professional Lobbyists Association (GPLA) handbook and member director.
- The Commissioners were provided with copies of the following bills currently under consideration by the Legislature: HB 889, HB798, HB1105, SB315, and SB391.

Chair Abernethy raised the topic of finding an unpaid intern to assist the Commission staff with the filing and other office needs and stated that he would look into it. Ms. LaBerge indicated that a legal intern would not be needed; however, there is a need for assistance for filing the paper documents of the Commission.

PUBLIC COMMENT:

Comment 1:

Charles Lowry, Councilman, City of Emerson, GA commented that he had been in touch with Ms. LaBerge, Ms. Godwin, Director of Education and Information, and Chair Abernethy and thanked them for their time. Mr. Lowry expressed his concern with his inability to reach a staff member. He then contacted the Governor's office looking for assistance regarding the reports he was to file with the Commission, which he indicated was a very difficult process. Mr. Lowry went on to state that if he had known then what he knows not he would not have run. He expressed that the process was too complicated.

Chair Abernethy thanked Mr. Lowry for coming to the meeting and his comments. He went on to state that he understands Mr. Lowry's frustrations and appreciates their past phone conversations.

Comment 2:

James Kulstad, lobbyist for Common Cause and a member of GPLA, standing in for William Perry of Common Cause who was unable to attend the meeting. Mr. Kulstad read two items on behalf of Mr. Perry:

1. Request that the Commission make some sort of public notice or statement providing a timeline on deciding fine appeals. It has been about six months since the Commission first said they would come up with a plan for addressing them.

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2. Request an update on the plan laid out last summer on the 90 day experiment with the Attorney General's office assisting with investigations. That time period has expired and there has been no public assessment of its effectiveness or if the arrangement will continue.

Chair Abernethy addressed the second request by stating the reforms that were instituted last summer were two prong: the AG prong and the in-house prong. The in-house reforms have largely been implemented and going quite well – including the hiring of a staff attorney. The Chair went on to indicate that one does not need to know much about budgeting to hear the new Executive Secretary speak about what is going on and the increase in funding the Commission has requested and the level of sophistication of which she [Executive Secretary] understands these issues and articulate them in an understandable way and obtain increase funding speaks for itself. Chair Abernethy went on to say that the in-house prong has been an overwhelming success in his estimation.

Regarding the fine issues, Chair Abernethy stated that it is still under consideration and he cannot comment on it.

Ms. Dagnev provided detail to the AG-prong of the second request. The AG did meet with the Commission staff to determine what the structure of the assistance would look like beyond its normal role. The Attorney General's office agreed that any jurisdictional questions could be sent for review. If there was a necessity for them to assist with the presentation of certain consent orders, which they have not had to present on behalf of the staff to the Commission. The 90 day period expired before anything substantive was sent to them to work on with the Commission staff. As far as any assistance they could offer for what their role would be now that the Commission has an outside counsel handling advisory opinions and a staff attorney to work on consent order further discussion would need to be conducted with the Attorney General's office. However, the needs to the Commission from last summer have appeared to resolve themselves.

Vice Chair Stringfellow commented that Ms. Dagnev was exactly right [regarding the issues of last summer have resolved themselves]. She went on to state that Chairman Millsap, at the time, had made the suggestion that before outside counsel was hired that we may expand our relation with the AG's office to assist with advisory opinions. For various reasons that did not seem to be the best fit for the Commission did engage outside counsel. The structure that is seen now, with the staff attorney and outside counsel and our traditional relationship with the AG's office is what will continue going forward.

Chair Abernethy stated that on behalf of the Commission the AG has always rendered the Commission excellent advice and has always been willing to help the Commission, even in an informal capacity.

Ms. LaBerge echoed Chair Abernethy's comments and stated that when she initially met with the AG the Commission did not have the outside counsel writing the Commission's advisory opinions and did not have a staff attorney hired. Now that the outside legal counsel has been hired to write the advisory opinions that has been taken off this agency in-house work. Also, with Elisabeth Murray-Oberlein hired to handle the cases, which is a fulltime job. The relationship with the Commission and the AG is in a very good place. Meron

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Dagnew and Stefan Ritter have been very helpful and the relationship with Jonathan Hawkins is working out great.

Vice Chair Stringfellow indicated that that was the hope of last June and July before these pieces of the puzzle were put into place, one option was to expand the relationship with the AG's office and we have chosen to go this route instead.

Comment 3:

Mr. Kulstad stated that he is a member of GPLA and services on its Ethics Subcommittee, which supports the Commission obtaining its rule making authority back. That support has been expressed to Chairman Wilkerson.

Comment 4:

Mr. Chalmers stated that from the perspective of individuals that are regulated who have been dealing with the Commission for over a decade, this staff is particularly responsive, they are tough but fair and they know the law well.

Motion to adjourn meeting made by Chair Abernethy

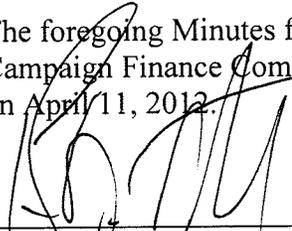
Seconded by: Vice Chair Stringfellow

Carried 5-0

Meeting was adjourned at 11:43 PM

Official Minutes Statement

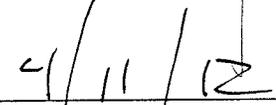
The foregoing Minutes for the February 28, 2012 meeting of the Georgia Government Transparency and Campaign Finance Commission were approved and adopted by the Commission at the Commission's meeting on April 11, 2012.



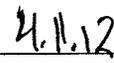
Kevin Abernethy, Chair



Holly LaBerge, Executive Secretary



Date



Date