

**OPEN SESSION**  
**MINUTES OF THE MEETING OF THE**  
**NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION**  
**Friday, August 26, 2011**  
**State Capitol, Room 1524**  
**Lincoln, Nebraska**

**Call to Order** – Chairperson Schweikart meeting to order at 9:00 a.m. and announced the location in the meeting room of a copy of the Public Meetings Law.

Roll Call –

Kevin Brostrom - Present  
John Gale – Present  
Joseph Grant - Present  
Paul Hosford - Present  
Jan Mumm - Present  
Richard Nelson – Excused  
Timothy Schulz - Present  
Judith Schweikart – Present  
Brad von Gillern – Present

**Introduction and welcome of new Commissioner Timothy Schulz-** Chairperson Schweikart asked Commissioner Gale to introduce and welcome new Commissioner Timothy Schulz. Commissioner Gale stated that Commissioner Schulz is a native of Beemer Nebraska who received his undergraduate degree from Nebraska Wesleyan and his law degree from the University of Nebraska. He is a partner at the Fremont law firm of Yost, Schafersman, Lamme, Hillis, Mitchell and Hartmann, where he is in the general practice of law. He has long served on various community groups including the Fremont Chamber of Commerce, Fremont Area United Way, the Fremont Keene Memorial Library, Fremont Economic Development Citizens Advisory Community and the Dodge County Bar Association.

**Approval of the Open Session Minutes of the June 17, 2011 Meeting** – Chairperson Schweikart referred the Commissioners to their copies of the Open Session Minutes of the previous meeting.

**Motion by Hosford, second by Grant, that the Open Session Minutes of the June 17, 2011 meeting be approved as presented** - Roll Call Vote: Commissioners Brostrom, Gale, Grant, Hosford, Mumm, Schulz, Schweikart, and von Gillern voted yes. Motion carried (8-0-0).

**Report on Late Filing Fees, including requests for relief** - Executive Director Daley indicated that there were no applications for relief.

**Consideration and Action: Proposed Advisory Opinion #200; Requested by Duane Acklie, Establishment of Nebraska First Spouses Fund** – General Counsel Danberg indicated to the Commission that the proposed advisory opinion before them addresses questions posed by an individual who seeks to create a First Spouses Fund. The purpose of the fund is to pay certain expenses of the Governor’s Spouse which are incurred while engaged in public activities. This Fund would pay for certain public activities of the current first spouse and would continue to assist future spouses. The question posed by the advisory opinion request is, “Does, the first spouses fund as proposed meet the requirements of the Nebraska Political Accountability and Disclosure Act?” The proposed opinion notes that the Governor’s spouse is not a public employee or public official as defined in sections 49-1442 and 49-1443 of the NPADA. General Counsel Danberg noted that only a few sections of the NPADA would apply to the Fund. The NPADA provides that gifts from principals or lobbyists to a member of the immediate family of any executive branch official shall not exceed \$50 in a calendar month. The Fund proposes to avoid this problem by refusing to accept donations from lobbyists or principals. The proposed opinion also notes the provisions of §49-14,101.01 which prohibits a member of the immediate family of a public official from accepting a gift of travel and lodging if the purpose of the gift is to allow the immediate family member to travel with the public official on official business. The Fund intends to avoid paying such expenses for the first spouse so as to remain in compliance with §49-14,101.01.

Discussion followed.

Jack Gould of Common Cause Nebraska addressed the Commission concerning Advisory Opinion #200.

Former State Senator Ernie Chambers next addressed the Commission regarding Advisory Opinion #200.

Discussion followed. It was noted that in the fourth paragraph of page 3 there is a reference to section 49-1490(c). The citation should read 49-1490(1)(c).

**Motion by Brostrom, second by Hosford, to approve Advisory Opinion #200 with the amendment to the citation on page 3** - Roll Call Vote: Commissioners Brostrom, Gale, Hosford, Mumm, Schulz, Schweikart, and von Gillern voted yes. Commissioner Grant voted no. Motion carried (7-1-0).

**Consideration and discussion of Attorney General’s Opinion requested by Commission and Consideration and action as to Campaign Finance**

**Limitation Act pursuant to 84-215 of the Nebraska Statutes** – Executive Director Daley stated that in June the U.S. Supreme Court issued an opinion in the Arizona Free Enterprise Clubs Freedom Club PAC v. Bennett, Secretary of State of Arizona. The decision invalidated part of Arizona's Clean Elections Law. Daley explained that a candidate for a covered public office may agree to participate in the Clean Elections program. In this program the candidate raises a certain amount of money in very small dominations and turns this over to the Clean Elections Fund. In exchange the candidate receives a lump sum of money for the campaign. The law also provides that if the candidate's opponent is not participating in the program and the opponent's spending exceeds a specified level, the participating candidate would receive additional funds on virtually a dollar to dollar basis. There is an additional provision that when third party entities make independent expenditures either opposing the candidate or supporting the opponent, the participating candidate would be eligible for additional funds on a dollar for dollar basis. It is this triggering of additional funds that concerned the U.S. Supreme Court in the Arizona case. The Supreme Court found that the matching funds provision put a substantial burden on the political speech of the non-participating candidate and on the entities wishing to make independent expenditures. It concluded that the provisions that triggered additional funds were unconstitutional. The Executive Director explained that this raised issues about Nebraska's Campaign Finance Limitation Act. He described the process by which public funds are distributed to abiding candidates under the CFLA. According to Daley, the distribution of public funds to qualified abiding candidates is triggered by the spending activity of a non-abiding opponent. Under the CFLA the abiding candidate would receive public funds equal to the difference between the spending limit and the actual spending of the non-abiding opponent or the difference between the spending limit and the estimate of spending of the opponent and the spending limit.

Daley explained that another provision of the CFLA is the aggregate contribution limit. Candidates running for covered elective office whether abiding or not abiding, are subject to aggregate contributions limits. That is, a candidate may accept contributions equal to fifty percent of the voluntary spending limit from independent committees, business, corporations, unions, industry, trade or professional associations, and political parties. Upon reaching this limit, no further contributions may be accepted from these sources. Executive Director Daley noted that the aggregate contribution limit of the CFLA did not appear to be affected by the Arizona decision.

Daley stated that after consultation with the Executive Committee, he requested an opinion from the Attorney General on the constitutionality of the public funding mechanism of the CFLA and the constitutionality of the aggregate contribution limits. Pursuant to that request, Attorney General Opinion #11003 was issued. The opinion stated that in light of the Arizona case the public fund triggering mechanism of the CFLA appeared to be unconstitutional. It further stated that the aggregate contribution limit provisions were not severable from the distribution

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provisions. Since they could not stand on their own, it was likely that they would be found to be unconstitutional.

The Executive Director set forth the Commission's options. First, do nothing and wait for someone to file a lawsuit enjoining the Commission from enforcing the CFLA. Second, take action and enforce the CFLA against someone that has potentially violated the CFLA. Third, invoke section 84-215 of the Nebraska Statutes. It provides that if a public official in reliance on an Attorney General's Opinion that a body of law is unconstitutional refuses to implement the law, a law suit is commenced to test of the constitutionality of the law. Typically, the Attorney General's Office would file a law suit against the Secretary of State challenging the constitutionality of the provision. Daley noted the possibility that the Nebraska Supreme Court would take original jurisdiction in this action.

State Senator Scott Lautenbaugh, addressed the Commission concerning the Attorney General's Opinion.

Jack Gould of Common Cause of Nebraska addressed the Commission concerning the Attorney General's Opinion.

Discussion followed.

**Motion by Grant, second by Schulz, to approve Resolution 11-02 by which the Commission refuses to implement, administer or enforce the CFLA 84-215** – Roll Call Vote: Commissioners Brostrom, Gale, Grant, Hosford, Mumm, Schulz, Schweikart, and von Gillern voted yes. Motion carried (8-0-0).

**Executive Director's Report (includes personnel activity, budget status, budget process and litigation status)** – Executive Director Daley referred the Commissioners to the final budget status report for fiscal year 2010-2011. A standard monthly report disclosed that one month into the budget year the Commission has spent 6.3% of the budget. There is approximately \$823,000 in the CFLA Fund.

Executive Director Daley reported that the Counsel for Governmental Ethics Laws (COGEL) Conference is scheduled for December in Nashville Tennessee. It was pointed out that the Commission has been a member since 1978. The Executive Director further explained that there seemed to be a lot of activity in the area of campaign finance, particularly on the Federal level which has a residual effect in Nebraska. The COGEL conference is where all of the experts and enforcement agencies in North America are in attendance. The Executive Director suggested to the Commission that two staff members ought to attend. There was no objection.

Discussion followed.

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Executive Director Daley reported on the Engler case. This case was an attempt to appeal an advisory opinion that the Commission issued in March 2010. It was dismissed by the District Court, and was dismissed by the Court of Appeals. The plaintiffs' motion for rehearing was overruled by the Court of Appeals. Daley reported that he does not know if the plaintiffs intend to appeal this to the Nebraska Supreme Court.

The Executive Director reported on the case of Prokop v. the NADC and others. It was dismissed by the U.S. District Court and is now pending before the 8<sup>th</sup> Circuit Court of Appeals. Briefs have been submitted by the parties. The Commission is being represented by the Attorney General's Office.

**Report of Conflicts Committee** – Commissioner Brostrom indicated that there are no challenges to report.

**Report of Executive Committee** – Chairperson Schweikart indicated that there are no issues to present at this time.

**Closed Session - Motion by Hosford, second by von Gillern that the NADC go into Closed Session pursuant to the confidentiality provisions of the NPADA** - Roll Call Vote: Commissioners Brostrom, Gale, Grant, Hosford, Mumm, Schulz, Schweikart, and von Gillern voted yes. Motion carried (8-0-0).

The NADC went into Closed Session at 10:22 a.m.

The NADC returned to Open Session at 10:50 a.m.

**Action on or Announcement of Closed Session matters** - Executive Director Daley reported that in the matter of Richard Pierce, case number 10-17, the Commission approved a settlement agreement in which it found that Mr. Pierce had violated the 49-14,101.01. The settlement agreement provides for the assessment of a civil penalty in the amount of \$2,000. The settlement agreement was approved with 8 Commissioners concurring, none dissenting and none abstaining.

**Adjournment – Motion by von Gillern, second by Mumm, that the NADC adjourn.** Roll Call Vote: Commissioners Brostrom, Gale, Grant, Hosford, Mumm, Schulz, Schweikart, and von Gillern voted yes. Motion carried (8-0-0).

Chairperson Schweikart declared the meeting adjourned at 10:57 a.m.