



Common-tary

*Newsletter of Common Cause Oklahoma
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For the Record

COMMON-TARY is published by the Board of Common Cause Oklahoma (CCOK). It is intended to inform the members of CCOK about the activities of the Board, individually and collectively. The members of the Board serve as volunteers, with no remuneration for their participation. Currently there are no paid employees of CCOK. The Board consists of eleven members, mostly from central Oklahoma. Their names and the cities they represent are listed on page 6. Most of the work of the Board is done by committees, of which there are five: the Social Committee, the Membership Committee, the ALEC Committee, the Election Reform Committee, and the Ethics Commission Committee.

Contributions to CCOK through our fund-raising efforts are forwarded by the Treasurer to the National Office, which then pays for expenses incurred by us in connection with these efforts, with the newsletter, and with any

research needed in connection with the development of any legislative or regulatory measures we consider consistent with our mission. Most of the contributions are used to support activities at the National Office. As always, we are thankful for the support we get from our members.

Lynn Howell, who has served as Chair of the Board for the past twelve years, resigned from the Board effective January 1, 2014 for personal reasons. He is being replaced as Chair by Hal Spake. Spake, now retired, was for many years a Foreign Service Specialist with the U.S. Department of State.

The article here by Lynn Howell describes our efforts to stay abreast of and influence changes in the rules which govern the actions of the State Ethics Commission. My contribution describes a model Election Commission for cities the size of Norman. The piece by attorney Charles Wright gives an update on a lawsuit which was initiated several years ago by a group of citizens, many of whom were CCOK Board members. The suit is being litigated by Wright, who was a staff employee at the Oklahoma Corporation Commission at the time that the action being challenged took place. The opened piece by Kate Richey deals with the status of the payday-loan industry in Oklahoma, a subject with which we have been concerned because of its impact on some of the most vulnerable citizens of the state. ■

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*This issue of COMMON-TARY was assembled and edited
by William Riggan.*

Recent Developments at the Oklahoma Ethics Commission

By T. P. Howell

As many of you may remember, in November 2013 Marilyn Hughes retired as executive director of the Ethics Commission. She had filled that role for 25 years, first as executive director of the statutory Ethics Commission (appointed by Henry Bellmon), and then as director of the constitutional body since its formation in July 1991. A number of other long-time employees of the Commission retired at that same time or shortly thereafter, including Rebecca Adams, the Commission's general counsel. That staff, working with many good commissioners over the years, had run the Commission as a professional and non-political agency, despite the efforts of many to undermine it.

When Ms. Hughes and the other staff retired, they took with them decades of experience and institutional memory. The current commissioners, though, led by chair Jo Pettigrew, immediately started working to fill the vacancies. They accepted and reviewed applications for the executive director and general counsel positions, and interviewed quite a few candidates.

Last January, the Commission announced that attorney Lee Slater had been hired as the new executive director. Many were surprised by this selection, and some were concerned, because for years a large part of Mr. Slater's law practice had involved representing clients before the Ethics Commission, including public officials and lobbying groups. In that role, he had sometimes opposed rules revisions that Common Cause supported, and vice versa.

As an attorney, however, that was his job. Lawyers are professionally obligated to be zealous advocates for their clients. In his new role, Mr. Slater will be obligated to act in the best interests of the Ethics Commission. Mr Slater was the State Election Board secretary for many years before he opened his law practice, and he did a great job. He was responsible for the current system of voting machines in Oklahoma, which are among the best in the nation because they are uniform throughout the state and because they allow for computerized voting yet leave a paper trail.

Mr. Slater and the Commission as a whole have got off to a good start. Apparently at least partially through his efforts, the Legislature increased the Commission's budget. This enabled the Commission to expand its staff and begin locating and fining violators of the campaign disclosure rules, mainly late filers and non-filers. The Commission also started reviewing and overhauling the ethics rules. Over the years, these rules have become somewhat unwieldy and difficult to understand. The Commission's stated goal was to rewrite the rules so that anyone who is subject to them will have all pertinent provisions clear and easy to find. For instance, in the new scheme, all the definitions and rules governing campaign disclosures are together in one section, and the definitions and rules governing lobbying are in another section.

In general, we supported this goal. Rules that are not easy to understand invite violations and are hard to enforce fairly. We also recognized, though, that for most of the previous rules and revisions, there had been a long period of discussion before they were enacted, so there must have been a good reason for them.

We therefore were glad when the Commission specifically invited Common Cause Oklahoma to participate in the rules revision process. We did our best to help improve the rules without sacrificing any of the principles that mean the most to us--namely openness, honesty and accountability.

Lee Slater prepared the initial drafts of the revisions, and the Commission considered them at its meetings in October, November and December 2013. Board members John Wood, Mark Burkett and Lynn Howell represented CCOK at the hearings. The hearings were long and detailed, but we will try to summarize for you the most important results.

The first set of revisions covered Chapter 1 of the Commission Rules, "Administration," as well as Chapter 30, "Investigations, Prosecutions and Penalties." We objected to only one proposal, which Mr. Slater adopted from a 2012 rule revision to which we had also objected. This provision was in Section 4 of Chapter 30 and states that the Commission will not accept any ethics complaints during election season. We said this was like closing the Dallas County Jail during the annual OU-Texas weekend. Nonetheless, that proposal and the other revisions passed.

We believe a positive feature of the Chapter

30 revisions is that the Commission will no longer have the option to issue private reprimands to rules violators. This comports with Common Cause's principle of openness in government, and may make it more likely that a violator will pay a fine rather than escape with just a slap on the wrist. The revisions also were better organized and easier to understand than the rules they replaced.

The second set of rules revisions, considered at the November meeting, covered Chapter 15, "Financial Disclosure"; Chapter 20, "Conflicts of Interest"; and Chapter 23, "Lobbyist Registration and Reporting." The meeting lasted almost all day.

We had no major problems with the Chapter 15 revisions, which improved the rules on financial disclosure by candidates and public officials. Regarding Chapter 20, we objected to a provision that said it was not a conflict of interest for a legislator to promote legislation that would financially benefit the legislator or a family member, if that legislation would apply "equally to all members of a profession, occupation or large class" (Section 7). We pointed out that we have frequently had situations in Oklahoma where legislators who were members of a particular profession, such as funeral directors, got legislation passed which benefited that profession, including themselves. We were overruled, however, and all the revisions passed.

The biggest battles occurred when the lobbyist rules were discussed. The new rules raised the amount that a lobbyist could spend on meals for a particular public official from \$100 to \$500. We argued that the Commission had heard no testimony from lobbyists or others that the lobbyists could not do their jobs because of the \$100 limit. The only argument made was that when the rules were enacted in 1992, the limit had been \$300--only recently reduced to \$100 (with the urging of CCOK)--and that \$500 was not that much more considering inflation.

Again, we lost this fight. We were successful, though, in opposing a related revision that would have let lobbyists, in addition to meals, give each legislator a ticket to a football game or other athletic or cultural event. This revision was withdrawn due to lack of support from the commissioners.

We also succeeded in promoting a revision to the draft rules that would preclude lobbyists from

paying for meals for an entire legislative committee, unless the meeting was held on the Capitol Building's premises. This was actually the culmination of several years of complicated arguments over whether lobbyists or their clients could pay for group meals without running afoul of the rules. Now generally they can, as long as there is full disclosure.

Finally, in December, the Commission considered revisions to Chapter 10 of the Ethics Rules, "Campaign Finance." This again was a 5-hours-plus meeting. The first provision we opposed was new Section 11, which permits elected state officers to use public funds to prepare and distribute newsletters at any time of year, as long as they do not expressly encourage a vote for or against a candidate or a state question. The previous rules had prohibited newsletters during campaign season. We pointed out that this would give incumbents free advertising and increase their already significant name-recognition advantage over challengers. Unfortunately, our position failed. We predict that many of you who have never received a newsletter from your state legislators will start getting them now.

On the other hand, we were successful in suggesting a revision to the definition of a political action committee (PAC) to include groups formed for the purpose of making contributions to other PACs. This should eliminate a common method of concealing the identity of contributors, by having them donate to one group that did not make any political expenditures itself, but simply donated its money in turn to a PAC that did so.

Before these rules were considered, John Wood and Lynn Howell had met with State Auditor Gary Jones, after hearing that he had some ideas on the new ethics rules. The upshot was that Mr. Jones agreed that the Auditor's office could help the Ethics Commission audit disclosures by lobbyists and candidate committees. The Commission did not adopt these suggestions, however.

Again, the rules revisions covered many more topics than we can discuss in this article. Overall, though, we believe we did the best job we could in standing up for the rights of most Oklahoma citizens, who are not members of special interest groups and cannot afford to hire lobbyists. We won some and we lost some, but the battle is not over. Thanks for your support. ■

Norman Election Commission

By R. E. Hilbert

What follows is an effort by the Norman Election Commission, with the approval of the Norman City Council, to inform the citizens of Norman of its role in enforcing certain provisions of the Norman City Code that deal with the election of a Mayor and members of the City Council. Particular attention is given to the functional significance of these provisions for the advancement of democracy by bringing openness and transparency to the electoral process.

IN GENERAL, THE COMMISSION ENFORCES THE RULES WITH RESPECT TO DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES. MORE SPECIFICALLY, THE COMMISSION

- (1) Reviews all disclosure reports from Candidates and from Political Action Committees (PACs) for accuracy and for internal consistency. PACs as well as Candidates must comply with the relevant sections of the City Code. (A PAC is defined as an organization concerned with the election or defeat of a particular candidate or with an issue in a given election.)
- (2) Investigates all substantial discrepancies between contributions and expenditures, and
- (3) Makes a final report to the City Council after each election.

The Commission does all this in close cooperation with the City Clerk, who provides the forms required for reporting, along with written instructions to candidates or their representatives.

THE PROVISIONS OF THE CITY CODE WHICH THE COMMISSION ENFORCES FUNCTION

- (1) TO CURB THE INFLUENCE OF MONEY, for example, by limiting contributions to candidates in City Council races to \$500 per person and to candidates for Mayor to \$1,000 per person.
- (2) TO MAKE AVAILABLE TO THE PRESS, POLITICAL OPPONENTS AND THE GENERAL PUBLIC, PRIOR TO AN ELECTION, the names, addresses and occupations of all persons who contribute more than \$50 to a given candidate, and thereby
- (3) TO PROVIDE THE BASIS FOR MAKING JUDGMENTS REGARDING THE INTERESTS OF THOSE WHO SUPPORT OR OPPOSE A GIVEN CANDIDATE OR ISSUE.

NOTE: The provisions of the City Code which the Commission is duty-bound to enforce are found in Sections 7.5-21 through 7.5-24. The Duties and Procedures of the Commission are listed in Sections 7.5-26 and 7.5-27. The Duties of the City Clerk in facilitating the process of enforcement are listed in Section 7.5-25. All provisions of the City Code can be found on the city's website www.CityofNorman.com and are available in the Office of the City Clerk, 201 West Gray Street, (405) 366-5406.

The members of the Norman Election Commission are Ty Hardiman (Chair), Dr. Richard Hilbert, Nina Flannery, Elizabeth Windes, and Robin Allen.



An Encouraging Update

By Charles Wright

As regular readers of the newsletter may know, a group of Oklahoma taxpayers, including a number of members of Common Cause, initiated a *Qui Tam* demand based upon the belief that Phillips Petroleum Company had been overpaid on claims submitted to the Environmental Clean-up Indemnity Fund. The Indemnity Fund is administered by the Oklahoma Storage Tank Division of the Oklahoma Corporation Commission and functions to assist petroleum storage tank owners in paying the clean-up costs associated with a release of petroleum into the environment.

A *Qui Tam* is an ancient Roman writ that encourages persons to take legal action on behalf of the taxpayers or citizens of the state. Since our action in *Qui Tam* was filed, the Oklahoma Legislature has made it more difficult for citizens to bring such actions. The effect of the change will be to undermine the motivation of persons who might otherwise bring attention to inappropriate actions taken by government officials. Some advocates of limited government apparently exclude citizen oversight and citizen reports of wrongdoing from their arsenal of mechanisms designed to achieve limited and ethical government.

The case continues to move forward, but slowly. As some of you may also recall, the initial taxpayer complaint involved the belief that Phillips had been paid substantially more in reimbursement of petroleum-release clean-up expenses than the company should have received. The belief was grounded in part on the issuance of an audit by the Office of the

State Auditor, which indicated that Phillips had been overpaid by one million dollars. Rather than seeking a return of the funds from Phillips in light of the State Auditor's report, the new administrators of the fund paid Phillips an additional \$3.6 million. This payment occurred after Phillips's representatives threatened to use the company's influence over the Legislature to move the fund from the Corporation Commission to the Department of Environmental Quality, unless Phillips's demands for increased payment were met. The representatives of the company advised the new administrator of the Division that this effort would be stopped upon payment of the demand. The money Phillips demanded was paid, and the effort to move the Division was terminated. The Division remains under the control of the Corporation Commission.

During the course of the litigation, which ensued after the Corporation Commission ignored the taxpayer complaint, it was discovered that Phillips had its own insurance regarding pollution of the environment caused by the releases of petroleum from storage tanks. This was a very significant discovery in that the Indemnity Fund monies are not accessible if the claiming party has purchased private insurance. In presenting its claims to the fund, Phillips failed to report that it had its own insurance. Consequent to this discovery, the taxpayers amended their complaint to indicate that not only was Phillips overpaid on its claims, but that it should not have been paid any monies by the Fund; because the Fund is, in effect, a default insurer for those who do not have pollution insurance applicable to releases of petroleum into the environment. As a result of this discovery, the taxpayers now demand that Phillips return not only the overpayment but all funds paid to the company by way of

the state insurance program. The complaint now alleges that Phillips inappropriately received \$7.5 million in payments from the Indemnity Fund. Phillips denies that it had applicable insurance. This denial occurs despite the fact that Phillips maintains a “captured insurance company” (Sooner Insurance), to which it can turn to seek reimbursement of clean-up costs, and also has a complex layer of private insurance from which the company collected \$168 million in settlement of pollution claims submitted by Phillips under that coverage. This settlement was to resolve issues associated with the recoverable costs associated with the clean-up of such sites around the world. We assume this would cover the Oklahoma pollution sites too.

The trial judge, however, has determined that the *Qui Tam* complainants were required to show that Phillips had allocated some of these funds specifically to Oklahoma sites and that Sooner Insurance was not an “insurer.” We are in the process of appealing this decision and hope to have it resolved by the Oklahoma Supreme Court. We believe that the appellate courts will decide the issue in favor of the taxpayer-plaintiffs. If this occurs, the litigation effectively will be over. If not, we will continue to pursue the initial theory of recovery on the overpayment and would anticipate trial of the matter soon after the appellate courts announce their decisions on the insurance issues. ■



Dubious Distinction:

Oklahoma Leads the Nation In Predatory Lending

By Kate Richey

According to a recent report by the Pew Charitable Trusts, Oklahomans turn to payday loans more than residents of any other state. In fact, there are more payday-lending storefronts in Oklahoma than there are Wal-Marts and McDonalds combined.

A standard payday loan is made for between \$100 and \$500 for a two-week period, with consumers promising to pay off the loan with their next paycheck. Most of the borrowers surveyed in the Pew Study said they used payday loans for recurring expenses, not emergencies. The cost of these loans is sky high: on average the APR is over 400 percent.

More than two in three payday borrowers -- 69 percent -- used their initial payday loan to cover recurring expenses like utilities, car payments, credit-card bills, rent or food. The fact that most borrowers turn to payday loans to deal with recurring expenses explains the pattern of repeat and chronic borrowing associated with most customers. In Oklahoma, about 75 percent of loans go to borrowers who take out nine or more loans over the course of a year, and a full 50 percent of borrowers average at least one loan every single month.

Struggling consumers turn to payday loans because they find themselves without enough money to make ends meet. While many first-time borrowers assume a payday loan will provide a one-time fix, the reality is

that few borrowers' financial problems have been resolved by the time the loan comes due two weeks later. The typical Oklahoma payday loan borrower ends up indebted for 212 days of the year.

Oklahoma policymakers need to look at the reality of payday lending and adopt strong reforms that will protect Oklahoma consumers.

These loans trap borrowers in a cycle of debt. The Center for Responsible Lending (CRL) found that out of the total volume of payday loans in 2009, some 76 percent were "churned" loans -- consecutive pay-period transactions. As the CRL describes, "This rapid re-borrowing indicates that most payday borrowers are not able to clear a monthly billing cycle without borrowing again."

To lessen the risk of a debt trap, Oklahoma law technically prohibits renewal or rollover of a payday loan. However, since it also permits borrowers to have more than one outstanding loan at a time, the rollover provision is functionally unenforceable.

Oklahoma should consider enacting the same interest-rate cap for civilian households that military leadership felt was necessary to protect active-duty households: an APR of 36 percent. The state could also limit a borrower to a single outstanding loan at a time and limit the number of transactions per borrower per year, ensuring that consumers don't get trapped on a debt treadmill that will only pull them even farther away from financial security. ■

Kate Richey is a senior staff member of the Oklahoma Policy Institute.

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If you haven't done so, please send us your current email address to facilitate contact with you.

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