



Wisconsin Ethics Commission

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Wisconsin Ethics Commission

Board Room
212 East Washington Avenue
Madison, Wisconsin
October 10, 2016
9:00 a.m.

Open Session Minutes

Present: Peg Lautenschlager, Katie McCallum, Mac Davis, David Halbrooks, Robert Kinney, and Pat Strachota

Staff present: Brian Bell, David Buerger, Richard Bohringer, Adam Harvell, Kyle Kundert, Molly Nagappala and Reid Magney

A. Call to Order

Commission Chair Peg Lautenschlager called the meeting to order at 9:03 a.m.

B. Report of Appropriate Meeting Notice

Administrator Brian Bell reported that appropriate notice of the Commission meeting had been given to the public and news media.

C. Personal Appearances

There were four personal appearances by members of the public:

1. **Attorney Michael Wittenwyler of Godfrey & Kahn in Madison** appeared on his own behalf and that of his clients to comment on advisory opinions of the Ethics Commission and its predecessor agencies. Attorney Wittenwyler, Commissioners and staff discussed the process for reviewing advisory opinions and whether they are consistent or inconsistent with recent changes to statutes.
2. **Attorney Jodi Jensen of Godfrey & Kahn in Madison** appeared on her own behalf to comment on the staff memorandum regarding the complaint process. Chair Lautenschlager asked Attorney Jensen to put her concerns in writing to the Commission.

Wisconsin Ethics Commissioners

Mac Davis | David R. Halbrooks | Robert Kinney | Peg Lautenschlager | Katie McCallum | Pat Strachota

Administrator
Brian M. Bell, MPA

3. **Matt Rothschild of the Wisconsin Democracy Campaign in Madison** appeared regarding a campaign finance complaint his organization filed against Representative Dean Knudson.
4. **Dean Knudson of Hudson** appeared on his own behalf to respond to the Wisconsin Democracy Campaign's complaint and ask the Commission to handle it in open session.

D. Minutes of the August 23, 2016 Meeting

Commission Chair Lautenschlager directed Commissioners to the draft meeting minutes in the meeting materials.

MOTION: Approve the August 23, 2016 Wisconsin Ethics Commission minutes. Moved by Commissioner Strachota, seconded by Commissioner Kinney.

Discussion of how votes were recorded. Staff Counsel Buerger recommended that when a voice vote is not unanimous that a roll call vote be performed.

MOTION: Amend the August 23, 2016 Wisconsin Ethics Commission minutes to reflect the correct date of the meeting. Moved by Commissioner Kinney, seconded by Commissioner McCallum. Motion carried unanimously.

MOTION: Amend the August 23, 2016 Wisconsin Ethics Commission minutes to insert "is to" on page 5, line 3 of the minutes between the words Commission and have. Moved by Commissioner McCallum, seconded by Commissioner Kinney. Motion carried unanimously.

MOTION: Amend the August 23, 2016 Wisconsin Ethics Commission minutes on page 6 to remove all language after "Commissioners discussed" and insert "Agenda Item E – Campaign Contributions by Commissioners". Moved by Commissioner Davis, seconded by Commissioner Halbrooks.

Roll call vote:

Davis – Aye	Lautenschlager – Aye
Halbrooks – Aye	McCallum – Aye
Kinney – Nay	Strachota – Aye

Motion carried 5-1.

Hearing no further amendments, Chair Lautenschlager called the question on approval of the minutes as amended.

Roll call vote:

Davis – Aye	Lautenschlager – Aye
Halbrooks – Aye	McCallum – Aye
Kinney – Nay	Strachota – Aye

Motion carried 5-1.

Mc
Kinney
6-0

E. LAB Presentation on GAB Audits

State Auditor Joe Chrisman and Performance Evaluation Director Dean Swenson of the Legislative Audit Bureau (LAB) appeared to discuss LAB reports 14-14 and 15-13 regarding the former Government Accountability Board. There are no outstanding obligations to report to the LAB regarding these reports.

F. Settlement Schedules Review

Administrator Bell presented the following settlement schedules and templates for review by the Commission.

1. Campaign Finance
2. Lobbying
3. Statements of Economic Interest

MOTION: Approve the proposed settlement schedules en masse including all of the settlement schedules plus the notice template and the settlement offer template. Moved by Commissioner Kinney, seconded by Commissioner Lautenschlager.

Discussion regarding extensions of time to file Statements of Economic Interests.

MOTION: On page 18, insert “in addition” before the sentence beginning “If an official or nominee fails to file a statement within 30 days”. Moved by Commissioner Davis, seconded by Commissioner Strachota. Motion carried unanimously.

4. Notice Template

MOTION: Amend the notice template on pages 23 and 24 that says “NOTE: DO NOT SUBMIT ANY PAYMENT AT THIS TIME. PLEASE WAIT TO RECEIVE A SETTLEMENT OFFER FROM THE COMMISSION BEFORE SUBMITTING PAYMENT” to say “wait for a decision from the Commission” Moved by Commissioner Halbrooks, seconded by Commissioner Davis.

Discussion. Commissioner Halbrooks withdrew his motion with the consent of Commissioner Davis.

MOTION: On page 24, delete “to receive a settlement offer from the commission” from the sentence beginning with Note. Moved by Commissioner Halbrooks, seconded by Commission Davis. Motion withdrawn.

MOTION: On page 24, replace “to receive a settlement offer” from the sentence beginning with Note with “for final action”. Moved by Commission Chairperson Lautenschlager, seconded by Commission Halbrooks. Motion carried unanimously.

5. Settlement Offer Template

Chair Lautenschlager called the question on the original motion to approve the proposed settlement schedules en mass, including all of the settlement schedules plus the notice template and the settlement offer template, as amended. Motion carried unanimously.

Chair Lautenschlager called a recess at 10:34 a.m. The Commission reconvened at 10:42 a.m.

G. Proposed Auditing Schedule

Administrator Bell presented the proposed auditing schedule for review by the Commission.

MOTION: Approve the audit schedules as described in the materials. Moved by Commissioner Kinney, seconded by Commissioner Strachota. Motion carried unanimously.

H. Administrative Rules Update – ETH 6, ETH 21, ETH 26

Staff Counsel David Buerger made an oral presentation based on a memorandum starting on page 37 of the meeting materials regarding the status of amendments to Chapters ETH 6 and ETH 21 and a proposed Chapter ETH 26.

MOTION: Direct staff to draft rules consistent with the statements of scope of ETH 6 and ETH 21; and approve the statement of scope of ETH 26. Moved by Commissioner Kinney, seconded by Commissioner Strachota. Motion carried unanimously.

I. Complaint Process and Procedures

Administrator Bell presented proposed complaint processes and procedures for the Commission's review. General consensus by Commission to take no action until staff has had an opportunity to review and incorporate Atty. Jensen's written comments.

Commissioner Davis suggested staff to delete "the Public Information Officer or other" from section A.1.

J. Advisory Opinion Review

Administrator Bell and Staff Counsel Buerger presented the staff memo regarding the Commission's review of advisory opinions.

MOTION: Find that all of the opinions in Part I of the memorandum are inconsistent with current law but continue, consistent with current practice, to make the opinions available to the public with a designation of inconsistent and a disclaimer as to the legal effect of the opinion. Moved by Commissioner Davis, seconded by Commissioner Halbrooks.

Discussion.

Chair Lautenschlager called the question. Motion carried unanimously.

Commissioners and staff discussed plans to take public testimony at a future Commission meeting on whether the remaining opinions are consistent or inconsistent with existing statutes. General consensus by the Commission to not act on opinions listed in Part II, but direct staff to invite public comment on those opinions and any other opinions not included for further consideration at a future meeting.

K. Statement of Economic Interests (SEI) System Development

Administrator Bell directed Commissioners to the staff memorandum on page 61 of the meeting materials regarding efforts to develop a new online system for officials to submit SEI forms. He said a cost-benefit analysis indicates it will pay for itself by saving staff time spent preparing and scanning paper forms. The presentation was for information, and the Commission took no action.

L. Potential Legislation

Administrator Bell directed Commissioners to a memorandum starting on page 71 of the meeting materials regarding 34 potential changes to the statutes the Commission administers. These recommended changes were collected from staff experience, comments from legislators and others in the regulated community, and from public comments at agency and legislative hearings.

Commissioners and staff discussed the Commission's role in recommending technical changes to statutes and whether it should also make policy recommendations.

MOTION: Include all items in the proposed legislative agenda memo on the Ethics Commission's legislative agenda. Moved by Commissioner Kinney, seconded by Commission Chairperson Lautenschlager.

POINT OF ORDER: Division of the question. Raised by Commissioner Davis. Commission Chairperson Lautenschlager determined division was appropriate.

Chair Lautenschlager asked that recommendation 1 be held until later.

MOTION: Accept recommendation 2, to revise § 13.625 to eliminate meandering language. Moved by Commissioner Kinney, seconded by Commissioner Davis. Motion carried unanimously.

MOTION: Accept recommendation 3 to revise § 13.68(6) regarding mailing written notices. Moved by Commissioner Davis, seconded by Commissioner Kinney. Motion carried unanimously.

Commissioner Davis asked that recommendation 4 be held until later.

MOTION: Accept recommendation 5 to revise § 13.685(7) regarding the requirement to provide lobbying information to legislative clerks. Moved by Commissioner Davis, seconded by Commissioner McCallum. Motion carried unanimously.

MOTION: Accept recommendation 6 regarding Contract Sunshine. Moved by Commissioner Davis, seconded by Commissioner Kinney. Motion carried unanimously.

MOTION: Accept recommendation 7 regarding the definition of a security in § 19.42(12). Moved by Commissioner Davis, seconded by Commissioner Strachota. Motion carried unanimously.

Commissioner Davis asked that recommendation 8 be held until later.

Commissioner Strachota asked that recommendation 9 be held until later.

Commissioner Davis asked that recommendations 10 and 11 be held until later.

MOTION: Accept recommendation 12 regarding the repeal of § 19.45(12), which a U.S. District Court found unconstitutional. Moved by Commissioner Davis, seconded by Commissioner Kinney. Motion carried unanimously.

Commissioner Davis asked that recommendation 13 be held until later.

Commissioner Lautenschlager asked that recommendation 14 be held until later.

MOTION: Accept recommendation 15 to revise unclear language in § 11.0101(7) regarding conduits. Moved by Commissioner Strachota, seconded by Commissioner Kinney. Motion carried unanimously.

MOTION: Accept recommendation 16 regarding filing fees in § 11.0102(2)(a). Moved by Commissioner Davis, seconded by Commissioner Kinney. Motion carried unanimously.

MOTION: Accept recommendation 17 regarding the yearly expiration and renewal of exempt status in § 11.0104. Moved by Commissioner Davis, seconded by Commissioner Kinney. Motion carried unanimously.

MOTION: Accept recommendation 18 regarding the exemption of committees from filing campaign finance reports if they have under \$2,000 in activity in a calendar year in § 11.0104(1). Moved by Commissioner Davis, seconded by Commissioner Kinney. Motion carried unanimously.

MOTION: Accept recommendation 19 regarding committees on exempt status that should not be required to file any reports in § 11.0104(2). Moved by Commissioner Strachota, seconded by Commissioner Kinney. Motion carried unanimously.

MOTION: Accept recommendation 20 regarding committees exempt from reporting requirements filing termination reports in § 11.0104(4). Moved by Commissioner Davis, seconded by Commissioner Kinney. Motion carried unanimously.

MOTION: Accept recommendation 21 to revise § 11.0201(4) regarding periods for contribution limits and record-keeping by the committee treasurer. Moved by Commissioner Kinney, seconded by Commissioner Lautenschlager. Motion carried unanimously.

MOTION: Accept recommendation 22 to clarify §§ 11.0204(4)(d) and (5)(c), 11.0204(6)(b), 11.0304(4)(d) and (5)(c), 11.0404(2)(d) and (3)(c), 11.0504(4)(d) and (5)(c), 11.0604(4)(d) and (5)(c), 11.0704(4)(b) and (5)(b), 11.0804(4)(d) and (5)(c), and 11.0904(4)(d) and (5)(c) regarding which committees are required to file a September continuing report. Moved by Commissioner Kinney, seconded by Commissioner Lautenschlager. Motion carried unanimously.

MOTION: Accept recommendation 23 regarding provisions in §§ 11.0204(1)(a) 7, 11.0304(1)(a) 7, 11.0404(1)(a) 7, 11.0504(1)(a) 7, 11.0604(1)(a) 7, 11.0804(1)(a) 6, 11.0904(1)(a) 7 exempting certain loans made to committees. Moved by Commissioner Kinney, seconded by Commissioner Lautenschlager. Motion carried unanimously.

MOTION: Accept recommendation 24 regarding §§ 11.0204(7), 11.0304(7), 11.0404(7), which establish a start date to begin late reporting, but no date to end them. Moved by Commissioner Strachota, seconded by Commissioner Davis. Motion carried unanimously.

MOTION: Accept recommendation 25 regarding § 11.0505 (1) (a) and §11.0605 (1) (a) which do not define starting and ending points for determining the aggregate spending on express advocacy. Moved by Commissioner Davis, seconded by Commissioner Kinney. Motion carried unanimously.

Commissioner Davis asked that recommendation 26 be held until later.

MOTION: Accept recommendation 27 regarding a possible drafting oversight in § 11.1103. Moved by Commissioner Strachota, seconded by Commissioner Davis. Motion carried unanimously.

MOTION: Accept recommendation 28 regarding § 11.1103 and the dates that campaign periods end. Moved by Commissioner Kinney, seconded by Commissioner Lautenschlager. Motion carried unanimously.

Commissioner Davis asked that recommendation 29 be held until later.

MOTION: Accept recommendation 30 regarding § 11.1208(2) and a definition for the term “strictly personal use,” which is not defined by statute. Moved by Commissioner Strachota, seconded by Commissioner Kinney.

Discussion.

Motion carried unanimously.

MOTION: Accept recommendation 31 to remove the requirement in § 11.1302 for any committee that makes a donation to a charity or the common school fund to report that activity within five days to their filing officer. Moved by Commissioner Davis, seconded by Commissioner Kinney. Motion carried unanimously.

MOTION: Accept recommendation 32 regarding § 11.1303(2)(a) and whether or not to require referenda committees to provide a disclaimer. Moved by Commissioner Davis, seconded by Commissioner Kinney.

Discussion.

MOTION: Amend the motion to say the Legislature should extend the disclaimer requirement to referendum committees and remove the words “or not.” Moved by Commissioner Davis, accepted by Commissioner Kinney. The motion was amended.

Motion carried unanimously.

MOTION: Accept recommendation 33 regarding § 11.1304(6)(b) and allowing certain committees to file paper reports. Moved by Commissioner Kinney, seconded by Commissioner Lautenschlager. Motion carried unanimously.

Discussion. Commissioner Davis asked that recommendation 33 be held until later. Commissioner Kinney withdrew his motion.

MOTION: Accept recommendation 34 regarding §§ 11.1400(5) and 11.1401(2) which imply that the Ethics Commission must act and make a probable cause determination prior to a district attorney acting on a complaint under the Commission’s jurisdiction, which is contradicted by an Attorney General opinion and § 978.05. Moved by Commissioner Davis, seconded by Commissioner Kinney. Motion carried unanimously.

Commissioner Halbrooks suggested adding a recommendation 35 regarding confidentiality of campaign finance matters. Commissioners agreed to have that discussion later.

M. Annual Report

Administrator Bell presented the draft annual report to be submitted to the Governor and the Legislature on October 15, 2016. Commissioners discussed the relation of staff counsel to the Commission in legal matters as well as the mission statement of the agency.

MOTION: Amend the draft mission statement on page 83 to read, “The mission of the Ethics Commission is to administer Wisconsin’s campaign finance, lobbying, and ethics laws; and disseminate information to the public.” Moved by Commissioner Davis, seconded by Commissioner Halbrooks.

Roll call vote:

Davis – Aye	Lautenschlager – Nay
Halbrooks – Aye	McCallum – Aye
Kinney – Nay	Strachota – Nay

Motion failed 3-3. The Wisconsin Ethics Commission's Annual Report will be submitted as drafted.

Administrator Bell reviewed the statutory duties of the Commission. Commissioner Strachota requested the delegation of authority to the Administrator to issue informal opinions be placed on the December agenda. Commissioner Strachota also requested the nonpartisan requirement of staff be placed on the December agenda.

N. Administrator's Report

Administrator Bell presented a report regarding the activities of the agency since the last meeting. The report is provided for information, and the Commission took no action.

O. COGEL Membership and Conference Attendance

Administrator Bell presented a verbal report on staff plans to join COGEL and attend the organization's annual conference.

P. Closed Session

MOTION: Move into closed session pursuant to § 19.50 and 19.55(3) to consider complaints and investigations, pursuant to § 19.85(1)(g) to confer with legal counsel with respect to likely litigation, and pursuant to § 19.85(1)(h) to consider requests for advice under the ethics code, lobbying law and campaign finance law. Moved by Commissioner Strachota, seconded by Commissioner Kinney. Motion carried unanimously.

Commission returned to open session at 3:25 p.m.

L. Potential Legislation, continued

Commission deferred discussion of the remainder of the items for the legislative agenda until the December meeting.

Q. Adjourn

MOTION: To adjourn. Moved by Commissioner Halbrooks, seconded by Commissioner Kinney. Motion carried unanimously.

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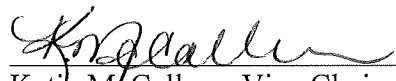
October 10, 2016 Wisconsin Ethics Commission meeting minutes prepared by:



David Buerger, Staff Counsel

December 6, 2016

October 10, 2016 Wisconsin Ethics Commission meeting minutes certified by:



Katie McCallum, Vice Chair

December 6, 2016