



**Minutes for Meeting of
Thursday, September 9, 2010**

Item-1: Call to Order

Commission Chair Westfall called the meeting to order at 5:00 p.m.

Item-2: Roll Call

Present – Commission Chair Larry Westfall, Vice-Chair Lee Biddle and Commissioners Clyde Fuller, John O’Neill, and Bud Wetzler

Staff – Executive Director Stacey Fulhorst, Attorney Lisa Foster, Program Manager Steve Ross, Senior Investigator Lauri Davis, Auditor Rosalba Gomez, and Executive Secretary Kathy Hunt

Item-3: Approval of Commission Minutes

Approval of Ethics Commission Minutes of August 12, 2010

Motion: Approved as amended with corrections to be made to Commissioner O’Neill’s name

Moved/Seconded: O’Neill/Fuller

Vote: Carried Unanimously

Item-4: Non-Agenda Public Comment

None

Item-5: Commissioner Comment

None

Item-6: Executive Director Comment

Director Fulhorst reported on a new project undertaken by staff in connection with the upcoming November election. The project involves summarizing pertinent financial information disclosed by political committees concerning City candidates and ballot measures, and posting it to the Commission's website in order to make the information more accessible to the public.

In addition, she reported on the continuing search for a new General Counsel to fill the current vacancy. She thanked the Commissioners who assisted her with interviews with several initial candidates. Although the Commission continues to receive resumes, she is considering the possibility of using the funds allocated for the General Counsel's salary and fringe benefits to hire an outside law firm as a consultant. She noted that it is difficult to find an attorney with all the necessary skills the Commission requires. She explained that this arrangement would allow the Commission to hire different attorneys to serve as petitioners for Commission hearings.

Item-7: General Counsel Comment

None

Item-8: Presentation of the Final Audit Report for John Hartley for City Council

Commission Auditor Rosalba Gomez presented the Final Audit Report and advised that there were no material findings.

Motion: Accept Report
Moved/Seconded: Wetzler/O'Neill
Vote: Carried Unanimously

Item-9: Impacts of Recent Litigation on Election Campaign Control Ordinance

Director Fulhorst presented the staff report regarding the recent developments in the *Thalheimer v. City of San Diego* litigation. She reminded the Commissioners that they decided at the July meeting that the Commission would not enforce the sections of the Municipal Code concerning re-reporting for general purpose recipient committees for so long as the City is enjoined from enforcing contribution limits for committees that make independent expenditures, and for so long as the \$1,000 contribution limit is in effect for political parties. She explained that the Plaintiffs recently petitioned the District Court for an additional injunction, arguing that the Ethics Commission plans to continue to enforce the underlying attribution limits, even if it is not enforcing the re-reporting rules. In other words, the Plaintiffs maintained that the Republican Party would be prohibited from using a donation of \$600 to pay for a \$1,000 contribution to a City candidate. In response, staff represented to the court that the Commission would clarify its intent not to enforce

the underlying attribution rules at its next meeting. Director Fulhorst reported that in response to information provided by the City, the Court denied the Plaintiffs' request for a preliminary injunction.

Motion: To clarify that the Commission will not enforce the attribution rules in San Diego Municipal Code section 27.2936(b) on political party contributions to City candidates for so long as the \$1,000 limit on such contributions remains in effect.

Moved/Seconded: Fuller/Biddle

Vote: Carried Unanimously

Item-10: Proposed Amendments to Ethics Commission Operating Policies

Simon Mayeski of Common Cause expressed his appreciation to the Commission for taking steps to ensure that Ethics Commission records will be retained.

Director Fulhorst commented that the proposed addition of a Records Retention policy arose in response to a request by a respondent in prior enforcement matter to have his stipulation removed from the Commission's website after a certain period of time. The Commission decided that for numerous reasons, certain types of records including stipulations should be maintained indefinitely on the Commission's website.

In addition, in response to direction from the Commission, staff proposed an amendment to the language in the Operating Policies concerning abstentions and recusals in order to eliminate the requirement that a Commissioner must obtain the consent of the other Commissioners in order to recuse himself or herself from participating in a decision.

There was discussion regarding proposed language concerning the ability of a Commissioner to participate in a decision in an impartial manner, with alternate language suggested by several Commissioners.

Motion: To approve the proposed amendments with modified language concerning abstentions to read as follows: is legally disqualified from participating in the decision or otherwise believes that he or she should not participate in the decision.

Moved/Seconded: Fuller/O'Neill

Vote: Carried Unanimously

Item-11: Adjournment to Closed Session

Commission Chair Westfall adjourned the meeting to Closed Session at approximately 5:25 p.m. He stated the Commission would reconvene into Open Session following the conclusion of Closed Session in order to report any action taken during the closed session portion of the meeting.

Reconvene to Open Session

Commission Chair Westfall called the meeting back into open session at approximately 6:15 p.m.

Reporting Results of Closed Session Meeting of September 9, 2010

Commission Chair Westfall reported the results of the Closed Session Meeting of September 9, 2010.

Item-1: Conference with Legal Counsel (10 potential matters)

Case Nos. 2010-68 through 2010-77 - In Re: - Alleged Failure to Timely Amend Lobbying Registration Form to Reflect Decisions Reported on Quarterly Disclosure Reports

Motion: Dismiss

Vote: Carried Unanimously

Item-2: Conference with Legal Counsel (4 potential matters)

Case No. 2010-08 – In Re: Alleged Failure to Timely Pay Vendor Debt

No Reportable Action

Case No. 2010-40 and 2010-41 – In Re: Alleged Failure to Timely File Quarterly Lobbyist Disclosure Reports

Motion: Dismiss

Vote: Carried Unanimously

Case No. 2010-66 – In Re: Alleged Failure to Disclose Economic Interest and Acceptance of Gift in Excess of Annual Limit

Motion: Dismiss

Vote: Carried Unanimously

Item-3: Conference with Legal Counsel (1 potential matter)

Case No. 2008-79 – In Re: Dante Dayacap - Alleged Misuse of City Position

No Reportable Action

Item-4: Conference with Legal Counsel (1 potential matter)

Case No. 2008-54 – In Re: Nancy Graham - Participation in Municipal Decisions Involving Economic Interests

No Reportable Action

Adjournment

The meeting adjourned at approximately 6:20 p.m.

Larry Westfall, Commission Chair
Ethics Commission

Katherine Hunt, Executive Secretary
Ethics Commission

THIS INFORMATION WILL BE MADE AVAILABLE IN ALTERNATIVE FORMATS UPON REQUEST.