



**Minutes for the Meeting of
Monday, June 9, 2005**

Item-1: Call to Order

Chairwoman Smith called the meeting to order at 5:00 p.m.

Item-2: Roll Call

Present – Chairwoman Dorothy L.W. Smith, Commissioners Larry Westfall, Karen Thomas-Stefano, April Riel and Charles Dick

Staff – Executive Director Stacey Fulhorst, General Counsel Cristie C. McGuire, Senior Investigator Lauri Davis, Financial Investigator Dee Dee Alari, and Executive Secretary Katherine Hunt

Excused – Commissioners Gregory Vega and Dorothy Leonard

Item-3: Approval of Commission Minutes

Approval of May 12, 2005, Ethics Commission Minutes

Motion: Approve
Moved/Seconded: Stefano/Dick
Vote: Unanimous
Excused: Vega/Leonard
Abstained: Smith

Approval of May 23, 2005, Ethics Commission Minutes

Commissioner Dick commented that the minutes are too detailed and need to be condensed.

Director Fulhorst stated the minutes would be brought back to the Commission in a revised format at the next meeting and because there would not be a quorum, the Commission could make a motion to file the minutes.

Item-4: Non-Agenda Public Comment

Mel Shapiro spoke regarding the dismissal by the Ethics Commission of a complaint against Coalition to Keep San Diego Working.

Ian Trowbridge commented on Commissioner Dick's suggestion to reduce the amount of information provided in the Ethics Commission's minutes.

Item-5: Commissioner Comment

Commissioner Riel commented regarding the retiring Ethics Commission members and remarked that it has been an honor to serve on the inaugural commission. She stated she is confident the incoming commissioners will do well.

Commissioner Smith agreed that she will also miss serving on the Commission and remarked she was on the Commission from the beginning and added that it has been a pleasure to work with the other Commissioners.

Commissioner Westfall commented he enjoyed working with the three departing Commissioners.

Commissioner Dick commented he would miss the leadership of the current Commission Chair and the other retiring members.

Item-6: Executive Director Comment

Director Fulhorst thanked the departing commissioners who have served on the Commission from the beginning. She pointed out these commissioners along with ex-commissioners Charles La Bella and Lisa Foster established the structure of the commission, drafted the enforcement procedures, wrote the audit manual and amended the City's Campaign laws. She thanked the departing commissioners and presented plaques to Commissioners Riel and Smith.

Item-7: General Counsel Comment

Cristie McGuire added to comments regarding the departing commissioners and mentioned she was impressed with the dedication of this commission and would miss the three inaugural commissioners.

Item-8: Report from Outside Counsel Charles La Bella

Ian Trowbridge addressed the Commission regarding the recommendation letter that was written by Ethics Commission Director Stacey Fulhorst. He expressed his opinion that the letter should never have been written with the approval of only two commissioners.

Charles La Bella provided advice to the Commission regarding its policy concerning the writing of letters of recommendation on Ethics Commission stationery. He advised that a strained and tortured reading of City Charter Sections 135, 136 and Council Policy section 000-04 could result in the conclusion that these sections prohibit the writing of letters of recommendation. According to La Bella, these Charter sections originated from another old section of the Charter which prevented employees from engaging in political activity. Therefore, he believes the intent of these provisions was to prohibit political activity.

La Bella advised the Commission that, while he does not believe the writing of letters of recommendation falls within the scope of what is considered misconduct under Charter sections 135, 136, and Council Policy 000-04, he cannot completely assure the Commission that these sections could not be used to suggest impropriety. Therefore, he recommended that the Commission limit future letters to letters of attestation of personal knowledge of another person's qualifications, and refrain from recommending a person for a particular position. La Bella added that he has not found any City regulations that would prohibit letters that attest to a person's personal interactions with another individual.

La Bella also advised the Commission that he reviewed the practice of other City departments and found that providing letters of recommendation is routine. According to La Bella, notice should be provided to City employees if there is a new City policy prohibiting letters of recommendation. He added that the regulations for the Federal government explicitly permit letters of recommendation when a person has personal knowledge regarding an applicant's qualifications.

Commissioner Dick questioned whether it made any difference whether the attestation or recommendation was oral or in writing. La Bella responded that the regulations do not make a distinction.

Director Fulhorst questioned whether the practice of sending informal letters and memos commending or thanking other City employees should be continued. La Bella stated that this practice is advisable provided that the memos are limited to an attestation of facts and do not make any recommendations.

Item-9: Proposed Retention of Outside Counsel

Ian Trowbridge commented the Ethics Commission already has outside counsel.

Chairwoman Smith stated for the record, that Charles La Bella is being retained on a pro bono basis.

Director Fulhorst clarified that this item is regarding the retention of the the law firm of McDougal, Love, Eckis, Smith, Boehmer & Foley. She explained this is the law firm that employs former deputy city attorney Lisa Foster and pointed out that Foster previously worked in the public policy section of the City Attorney's Office and is familiar with all the local government ethics laws. She pointed out the retainer agreement would be to use the services of this law firm only when Cristie McGuire is unavailable. She advised she has obtained approval from the City Manager to sole source the agreement to Lisa Foster's firm.

Motion: That the Ethics Commission Chair be authorized to enter into the agreement subject to Commissioner Stefano's review and approval.

Moved/Seconded: Dick/Westfall

Vote: Unanimous

Excused: Vega/Leonard

Item-10: Proposed Amendments to the Commission's Investigative and Enforcement Procedures

Melvin Shapiro recommended the procedures be changed to give the Ethics Commission the right to initiate investigations and to allow public access to closed case files.

Ian Trowbridge commented the Ethics Commission should have an appeal process.

Director Fuhorst advised that she had given a brief overview of the staff report regarding this item at the last meeting and explained how some of the proposed changes had developed.

Motion: To approve amendments to the Ethics Commission's Investigative and Enforcement procedures.

Moved/Seconded: Stefano/Riel

Vote: Unanimous

Excused: Vega/Leonard

Item-11: Policy Regarding Release of Commission's Investigative Records to Other Law Enforcement Agencies

Charles Herzfeld spoke on behalf of April Boling and expressed concern that sharing information would undermine the ability of the Ethics Commission to conduct investigations and that people would be less forthcoming with information during investigations. He pointed out that releasing files would also necessitate the need for more attorney involvement and would incur additional expenses for the regulated

community. He recommended that the Ethics Commission adopt a policy that precluded the release of files to the City Attorney.

Pat O'Toole advised he was representing the City Attorney's Office as well as himself regarding this matter. He commented that Municipal Code section 26.0420(e) doesn't prohibit sharing information when it's in the interest of justice. He stated that this matter requires more study.

Melvin Shapiro commented that his understanding of Municipal Code section 26.0420 was that information could be disclosed to the City Attorney and other law enforcement agencies.

Ian Trowbridge remarked on recent Ethics Commission fines.

Pat O'Toole questioned how other Ethics Commissions handle the matter of sharing information with other agencies. He pointed out many agencies have dual purpose investigations.

Director Fuhorst reported to the Commission on the matter of developing a policy regarding release of Ethics Commission records to other agencies. She mentioned the Ethics Commission has received two inquiries for sharing of records from other agencies, and that the respondent in one matter agreed to the release of records. She pointed out that other cities that have ethics commissions do not have active public integrity units and they handle their violations administratively and not criminally.

She explained the intent of section 26.0414(e) was to permit the Deputy City Attorney previously assigned to advise the Ethics Commission to access the Commission's investigative files.

She advised there are legal concerns which Cristie McGuire will address as well as practicality and resources issues. She pointed out if information was released through an administrative process and was also used in a criminal matter it would change the dynamics for the regulated community and hinder investigations because of a lack of cooperation. She pointed out the Ethics Commission has extremely limited resources and needs the cooperation of those involved in investigations in order to conduct them in a timely manner. She proposed that the Ethics Commission refrain from sharing their files without a release from a respondent, and only refer matters to a criminal law enforcement agency when the Ethics Commission feels it is appropriate.

Cristie McGuire mentioned legal issues associated with sharing records and noted the same issues are discussed in her memo. She expressed concern regarding the commission adopting a policy that allowed the routine turning over of records and stated she believes there would be practical problems in terms of the staff and legal issues as well.

Chairwoman Smith stated she believes the Ethics Commission's current policy is sufficient. She stated she would be opposed to having other agencies routinely use Ethics Commission staff to obtain information in order to conduct a criminal investigation.

Commissioner Riel suggested doing research on how the City of Los Angeles Ethics Commission handles this issue.

Commissioner Dick advised he will not be here in July and suggested the Commission not take action on this in July in order for further studies to be done.

Director Fulhorst agreed that allowing extra time to consider this matter would be prudent and suggested the item be docketed for the August meeting.

Chairwoman Smith clarified that the matter for consideration was not about routinely sharing information, but concerned special circumstances.

Item-12: Appointment of Ad Hoc Committee to Nominate Commission Officers at July 14, 2005, Commission Meeting

Chairwoman Smith made a request for volunteers to serve on the Ad Hoc Committee.

Director Fulhorst pointed out that there will be three and possibly four new commissioners this year and advised that the Mayor's Office is in the process of finding nominees. She explained although they were having difficulty finding qualified people, she had been assured they would have several nominations in June.

Chairwoman Smith appointed Commissioners Dick and Stefano to serve on the Ad Hoc Committee.

Item-13: Adjournment to Closed Session

Chairwoman Smith adjourned the meeting to Closed Session at approximately 6:58 p.m.

Reconvene to Open Session

Chairwoman Smith called the meeting back into open session at approximately 7:45 p.m.

Reporting Results of Closed Session Meeting of June 9, 2005

Chairwoman Smith reported the results of the Closed Session Meeting of June 9, 2005.

Item 1: Conference with Legal Counsel (5 Potential Matters)

(Two items withdrawn from agenda)

Case No. 2004-58 – In re: Alleged Contribution in Excess of Limit

No reportable action

Case No. 2004-69 – In re: Alleged Failure to Maintain Proper Accounting Records

No reportable action

Case No. 2004-60 – In re: Alleged Failure to Obtain Required Contributor Information

No reportable action

Adjournment

The meeting adjourned at approximately 7:50 p.m.

_____, Chair
Ethics Commission

Katherine Hunt
Ethics Commission

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

