

GOVERNOR'S COMMISSION ON STRENGTHENING UTAH'S DEMOCRACY

KUED Board Room, Eccles Broadcast Center

MINUTES

SATURDAY, MARCH 28, 2009

Commission Members Present: Frank R. Pignanelli, Tom Love, Dr. Dan Jones, Bruce Hough, Randy Dryer, Ken Verdoia, Kirk L. Jowers, LaVarr Webb, Dick Richards, Doug Wright, Dee Rowland (for Most Reverend John C. Wester), Meghan Holbrook

Commission Members Absent: Dave Hansen, Senator Scott Jenkins, Yvette D. Donosso, Steve Starks

Commission Staff Present: Matthew T. Sanderson, Taylor D. Morgan, Kate Mecham

The Meeting Proceeded as Follows:

1. Welcome by Commissioner Kirk L. Jowers, Vice-Chair

- a. Commissioner Jowers thanked members of the media and the public for their attendance. Mr. Jowers also thanked Commission staff for their preparation and Commissioner Ken Verdoia and KUED for hosting the meeting.

2. Commission Business

- a. Approval of Minutes – March 3rd Meeting
 - i. Commissioner Doug Wright moved to approve minutes of March 3rd meeting. Motion seconded by Commissioner Randy Dryer; approved unanimously.
- b. Proposed Procedural Roadmap and Commission Procedures
 - i. Commissioner Jowers discussed potential locations for future meetings. It was suggested that the April 16th meeting be held at Brigham Young University.
 - ii. The Commission discussed moving its Thursday, July 30th meeting to Friday, July 31st to accommodate travel to Cedar City. Commissioner Ken Verdoia recommended that the meeting begin as early as possible in order to engage the student body at Southern Utah University. It was decided that the meeting will be held from 3:00 to 7:00 pm on Friday, July 31st.
 - iii. The Commission discussed its upcoming meeting in Ogden, on the campus of Weber State University. The student-chairmen of the Young Democrats and the Young Republicans of Weber State University introduced themselves.
 - iv. Commissioner Jowers opened a discussion on the procedures of the Commission – quorums, voting, and so forth.
 1. Commissioner Bruce Hough moved that the Commission adopt the Proposed Procedural Roadmap.
 - a. Commissioner Randy Dryer moved to amend the Proposed Procedural Roadmap to change the requirement for approval of recommendations from two-thirds of Commissioners to a simple

majority. He pointed out that there are 17 members of the Commission, and that a two-thirds approval would require 11 members in agreement, which may be challenging in some instances. Commissioner Dryer expressed concern that the two-thirds majority may unnecessarily impede the Commission's ability to make effective recommendations. He specified that the simple majority must be a simple majority of the entire Commission – 9, as opposed to a simple majority of a quorum – 5.

- b. Commissioner Ken Verdoia moved to amend the Proposed Procedural Roadmap to require that the Commission record all votes by name in order to ensure accountability. The Commission discussed recording votes; the issue of recorded votes will be discussed further at the next meeting.
 - c. Commissioner Dryer's motion to amend was seconded by Doug Wright; passed unanimously.
2. Commissioner Tom Love recommended that before any policy recommendations are made, the Commission should allow ample time for public input. Commissioner Jowers noted that the Commission has encouraged members of the public to suggest recommendations for discussion, as well as to present to the Commission in person.
- a. Commissioner Ken Verdoia stated that the Commission should designate at least one meeting for public input. Mr. Verdoia stated that the Commission should "open the microphone" to the public before the Commission makes its final recommendations.
 - i. Commissioner Kirk Jowers recommended that the Commission use its September 10th meeting for public recommendation and input.
 - b. Commissioner Bruce Hough suggested that the Commission do more to publicize its new website. He recommended that the Commission should reserve time at the end of each meeting for input by members of the public in attendance.
 - i. Commissioner Love suggested that the Commission ask the Governor's office to help publicize the Commission website with a link, press release, or the like.
 - c. Doug Wright suggested that the Commission utilize the "Talk with the Governor" radio show to open a dialogue between the public and the Commission.
 - i. Commissioner Ken Verdoia proposed creating a subcommittee of two – he and Commissioner Doug Wright, to pursue a radio/television program to facilitate public input into Commission business.
 - d. Commissioner Frank Pignanelli recommended that the Commission utilize a legislative interim committee meeting to submit recommendations. The date to do so would be Wednesday, November 11th.
 - e. Commissioner Dan Jones reminded the Commission that municipal elections will be held in early November. He expressed concern that the public will be targeted with elections and bond issues, and that the Commission's business may be lost in the mix of advocacy issues.

3. Commissioner Bruce Hough moved that the Commission adopt Commissioner Jowers' recommendation to schedule 30 minutes at the end of each meeting for public inquiry. The Commission agreed unanimously to the amendment and the motion, upon second by Commissioner Randy Dryer.
 4. Commissioner Ken Verdoia asked if the Commission, as appointed by the Governor, has a reporting responsibility to the Governor. Mr. Verdoia also asked if the Commission has the authority to interact with the Legislature directly, or if all recommendations should go through the Governor's office.
 - a. Commissioner Kirk Jowers noted the point, and elaborated to include that the Commission should report to parties.
 5. Commissioner Doug Wright brought up the status of the legislative representatives on the Commission. Commissioner Jowers stated that there has been communication between the Legislature and the Commission, and that the Legislature indicated that appointments would be made after the 2009 Legislative Session, but that they (the Legislature) have not yet done so.
 - a. Commissioner Randy Dryer recommended that the Commission politely give the Legislature a deadline by which they must make appointments. The motion was seconded by Commissioner Hough and approved unanimously.
 - i. Commissioner Doug Wright noted that the Legislature's involvement is critical to the success of the Commission.
- v. Website Update
1. Commissioner Tom Love stated that the proposed changes to the Commission website have been made. The website's email function is now active. Commission senior staff Taylor Morgan will send detailed email instructions to all Commission members.

3. Legislative Session Review

- a. Review by Commissioners Frank R. Pignanelli and LaVarr Webb
 - i. Commissioner Frank R. Pignanelli reviewed a document sent to Commission members (available on the Commission website), which outlined 2009 bills on ethics.
 - ii. Commissioner LaVarr Webb mentioned that there were more ethics bills in the 2009 session than ever before. Mr. Webb also noted that the House created a standing ethics committee. The Senate did not.
 - iii. Commissioners Ken Verdoia and Doug Wright brought up the constitutionality of the Legislature policing their own ethics. Mr. Pignanelli commented that the public, in the past, has been very aware of the most common ethics infractions – meals, tickets to sporting events and concerts, and so forth. Mr. Wright stated that he felt the public has become more sophisticated in their level of understanding in regard to legislative ethics.

4. Redistricting Law Summary

- a. Presentation by Douglas Owens, Holland & Hart
 - i. Mr. Owens highlighted three questions: (1) is there a problem, (2) what are your goals, and (3) what mechanism would fix the problem(s)? Mr. Owens referred Commission members to his summary document, which is available on the Commission website.

1. Mr. Owens referred Commission members to recent redistricting in Texas. In 2004, an “egregious redistricting agenda” was passed that resulted in 6 fewer Democrats being elected in Congress. Today, 13 states have independent redistricting commissions.
 2. Mr. Owens stated that the most relevant issues revolve around curbing excess in redistricting – respecting compactness and competitiveness, as well as various political subdivisions. It is important to remember that like-minded individuals tend to congregate together. It may be difficult to remove politics entirely from the process of redistricting, but still possible to curb excesses.
 3. As for remedies, Mr. Owens presented the example of California - where an independent redistricting commission was established.
 4. Mr. Owens stated that redistricting commissions can, and have, led to less-competitive districts. He cited examples in Arizona and Iowa. In Iowa, legislative staffers are responsible for producing boundaries, during the development of which they are forbidden from looking at political data.
- b. Commission Deliberation
1. Commissioner Webb asked how politics and partisanship can be taken out of redistricting - if they can be entirely or if the politics are just moved to a different level, so to speak.
 - a. Mr. Owens responded that the Commission needs to consider whether the political process of redistricting, which is a fundamentally political process, is most effectively removed from the Legislature, or if it’s most effective in the courts, or elsewhere.
 2. Commissioner Bruce Hough asked if the redistricting process in Utah is a problem.
 - a. Mr. Owens responded with a few cases of very egregious redistricting in Utah. Mr. Owens explained that a problem is evident when one party can gain a slim majority, then win an overwhelming majority in the next election.
 3. Commissioner Dick Richards stated that he feels politics can never be removed from the redistricting process. He also noted that the public is generally distrustful of legislators drawing their own districts.
 4. Commissioner Bruce Hough asked if the public has a concern over redistricting. Commissioner Wright noted that he believes there is a perception problem in Utah about redistricting and ethics.
 - a. Commissioner Holbrook mentioned that the fourth Congressional seat will cause further redistricting issues and that the public’s knowledge of redistricting is very limited.
 5. Commissioner Dan Jones stated that, according to a recent poll, less than 10% of responders know their legislative boundaries. Furthermore, less than 20% know their Congressional districts. Dr. Jones also believes that Utahns demand a sense of fairness in establishing districts.
 6. Commissioner Randy Dryer commented that either the decision-making body must change or there must be standards adopted that will ensure fairness. He stated that, according to the Utah State Constitution, the Legislature is the redistricting body. Mr. Dryer asked if changing the standards could be done by legislative or constitutional action.
 - a. Mr. Owens responded that it could indeed be done by legislative action, but that it could also be undone by legislative action.

7. Commissioner Meghan Holbrook pointed out that Members of Congress need not reside within the district they represent.
8. A member of the public in attendance posed a question to Mr. Owens about states utilizing proportional representation for Congressional redistricting.
 - a. Mr. Owens responded that it is not possible to use proportional data for U.S. House districts.
9. Commissioner LaVarr Webb noted that, several years ago, Governor Matheson appointed his own redistricting commission, as the State Legislature had refused his request for an independent redistricting commission
10. Commissioner Tom Love reminded the Commission of several other egregious redistricting cases, particularly in rural Utah.
11. Commissioner Bruce Hough stated that he feels an empirical, non-political redistricting may very well cause more outrage than political redistricting.
12. Commissioner Dick Richards noted that candidates and media can serve to mitigate the worst cases of redistricting.
13. Commissioner Randy Dryer asked if it would be possible for Mr. Owens to produce a graph outlining different redistricting laws in different states.
 - a. Mr. Owens agreed to produce such a graph.
14. Commissioner Meghan Holbrook added that she would like to see similar information for neighboring states in the Intermountain West.
15. Commissioner Bruce Hough mentioned that he would like to have legislative staff brief the Commission on current redistricting procedures.

5. Campaign Finance Law Summary

- a. Presentation by Stefan P. Brutsch, Parsons Behle & Latimer
 - i. Utah has laws requiring disclosure of campaign monies. In a typical election year, candidates are required to report six times.
 - ii. Utah law requires names of donors, but does not require names of employers or occupation. There is a concern that donors may funnel money through employees in order to hide the identity of the actual contributor.
 - iii. Utah does not have any limits on the amount of campaign contributions. It is one of only four states without such limits. States that do have limits on campaign contributions vary widely in amount.
 - iv. Currently, 24 states require disclosure of how campaign monies are spent. Utah law does not require sub-vendor disclosure, which significantly limits the capacity to track the destination of funds.
 - v. There are 9 states with public funding of elections. In general, these systems are seen to be ineffective in limiting the influence of elections. Often, candidates who can raise enough money opt out of the public financing.
- b. Commission Deliberation
 - i. Commissioner Jowers referred to the question, which was posed to the Lt. Governor in the last Commission meeting, - “what one thing should be changed about campaign finance.” According to the Utah Lt. Governor’s office, there is no administrative procedure to resolve campaign disputes in Utah.
 1. Commissioner Jowers asked that the Commission examine different systems of administrative process for resolving election disputes – whether that power should be established within the Lt. Governor’s office or in a different office.

2. Commissioner Webb noted that it would be interesting to see how other states handle election disputes, as the Lt. Governor himself is politically affiliated.
- ii. Commissioner Dryer stated that the Commission should address four key policy issues with regard to campaign finance: (1) should there be campaign contribution limits? (2) Should the Commission recommend a ban on corporate contributions? (3) Is public funding of elections a viable option? And (4) the fundamental change of disclosure (reporting requirements) in time and method.
- iii. The Commission discussed the difference between corporate and union contributions. Commissioner Dryer noted that unions can establish a PAC for political contributions, but cannot donate directly to candidates. Currently, corporations in Utah can donate directly to campaigns without establishing a PAC or another sub-organization.
- iv. Commissioner Hough recommended that the Commission examine laws in Michigan requiring immediate and transparent disclosure.
- v. Commissioner Holbrook reminded the Commission to consider the cost of potential changes.

6. Lobbying Law Summary

- a. Presentation by David R. Hall, Parsons Behle & Latimer
 - i. Mr. Hall referenced a recent news article about President Obama's tough ethics rules.
 - ii. Mr. Hall held up Saturday's (March 28th) newspaper, quoting Commissioner Pignanelli saying that HB345 "May not resolve all the issues of the revolving door lobbying issue."
 - iii. Mr. Hall stated that it's important to strike a balance with lobbying issues. It is an interesting and difficult topic.
 - iv. He noted that HB345, the "lobbying bill," was passed, but has not yet been signed by the Governor.
 1. Mr. Hall referred to the provision in HB345 which creates an exception for "a business with which a legislator is associated," unless the primary function of the organization is lobbying. Mr. Hall noted that Maryland defined their lobbying exception to limit contingent compensation. There is still debate about how large of a loophole this provision presents, and it remains to be seen exactly how it will be interpreted and enforced.
 2. Commissioner Jowers asked about the enforcement or penalties for lobbying. Mr. Hall responded that currently, Utah law requires lobbyists to receive a license from the Lt. Governor's office. HB345 prevents someone, who is ineligible according to its provisions, from attaining a license. Penalties already exist for lobbying without a license.
 - v. Mr. Hall pointed out that because Utah is a part-time legislature, it has been classified as a "blue state" by the Conference of State Legislatures, meaning that legislators receive very little compensation for their "citizen work" as a legislator. Mr. Hall noted that in Utah, legislators have no staff and therefore rely on lobbyists for information while their counterparts in other states with full-time legislatures depend on staff for information.
- b. Commission Deliberation
 - i. Commissioner Verdoia noted that "there is lobbying and there is lobbying." Meaning that there are significant costs to being in position to even offer a meal to a legislator. Some lobbyists have greater access in the first place, perhaps

through campaign donations. Mr. Verdoia stated that limits on campaign finance and lobbying cannot be divorced.

- ii. The Commission engaged in a lengthy discussion about what constitutes a lobbyist, as well as the phenomenon of “astroturf” lobbying versus “grassroots” lobbying.
 - 1. Commissioner Hough stated that any process that advances public input into the legislative process will strengthen Utah’s democracy.
- iii. Commissioner Jowers stated that the Commission should look at five issues in regard to lobbying: (1) revolving door for lobbyists, (2) disclosure of lobbyists’ compensation and expenditures, (3) grassroots lobbying, (4) occupation and employer disclosure, and (5) details of H.B. 345 and its exemption provision.
 - 1. Commissioner Hough stated that he would like to separate compensation from expenditures.
 - 2. Commissioner Love mentioned that he would like to encourage grassroots lobbying, rather than further restrict it. Commissioner Holbrook also expressed her interest in promoting advocacy.

7. Ethics Law Summary

a. Presentation by Scott S. Bell, Parsons Behle & Latimer

- i. Mr. Bell stated that there are three basic subtopics to ethics reform: (1) gift reform, (2) conflict of interest reform, and (3) establishing an independent ethics commission.
 - 1. As for gifts, SB156 (2009) amended Utah law related to what lobbyists can give.
 - a. The act defines gift to mean “a transfer of real or personal property, or anything less than fair value.”
 - b. SB156 amends Utah law to include admission to events.
 - c. Lobbyists cannot give a gift to a public official if the official is involved in action that directly affects the donor, with the exception of occasional gifts worth less than \$50.
 - d. SB156 mandates that a law go into affect in May, 2009 that requires gifts of more than \$10 to be reported, as well as food and entertainment valued over \$50.
 - e. Lobbyists can still take legislators to meals; they are required to file it in their quarterly report. Total amount of expenditures, amount paid to public officials for travel, and payments for event admissions, gifts given to legislators worth more than \$10 and food or beverage payments worth more than \$50 must now be disclosed by lobbyists each quarter.
 - f. Lobbyists must also submit an annual report in which they disclose the same items on an annual basis.
 - i. Commissioner Jowers asked who exactly is required to disclose – hiring entities or the actual lobbying registrants.
 - 1. Commissioner Pignanelli noted that the person who files as the “principal” must make the disclosure. If the lobbying work is entirely and completely exported to an outside office, and that office files as the principal, that lobbying office must submit the report.

2. Mr. Bell stated that conflict of interest rules break into two categories: laws on what type of employment officials can have and what information is required to be disclosed. In Utah, the Legislature imposes rules upon itself.
 - a. legislators cannot have employment that impairs their judgment;
 - b. they cannot be paid to lobby their fellow legislators; and
 - c. they cannot use information they gain in their capacity as a legislators to gain unfair advantage with the state in personal business dealings.
 - i. The State of Washington requires the broadest reporting – all employers, insurance policies, bank accounts, creditors you owe, personal debt, personal property valued at more than \$250,000.
 3. Utah does not have an independent ethics commission. The House established a standing committee on ethics. The Senate did not.
- b. Commission Deliberation
- i. Commissioner Dryer commented that Utah does not require Executive Branch employees to disclose information. Executive Branch officials are full-time employees of the state. Utah is very different from other states on this matter.
 - ii. Commissioner Love suggested that the discussion be opened up to members of the public in attendance.
 1. A member of the public in attendance, former State Representative David Irvine, commented that an independent ethics commission is essential. As counsel to the legislators who filed ethics complaints in 2008, he stated that the allegations against legislators typified behavior that is unacceptable.
 - a. The process that the Legislature has established for dealing with ethics complaints means it is nearly impossible for any legislator to be found of guilty of doing anything inappropriate unless the accused “admits personally or is shown in video tape committing the action.” He noted that the Commission should look carefully at the current process.
 - b. In addition, he noted that there should be a clear code of conduct established for legislators and lobbyists.
 - c. Finally, he recommended eliminating the convention and caucus system in favor of a direct primary system.
 2. Another audience member, former State Representative Kim Burningham, commented about the use of campaign funds, specifically dispersing campaign funds to other candidates to influence leadership positions.
 3. Ms. Dee Rowland, representing Commissioner Wester, noted that she was an observer of the passage of HB345 in committee and that she felt that the “loophole” discussed earlier was most definitely intended by the Legislature.

8. Conclusion

- a. The Commission’s next meeting will be held on Thursday, April 16, 2009 from 3:00 – 6:00pm. The meeting will be held in or near Provo. Exact location will be determined and announced to the public.