

GOVERNOR'S COMMISSION ON STRENGTHENING UTAH'S DEMOCRACY

Zions Bank Basketball Center
Salt Lake City, Utah

MINUTES

THURSDAY, MAY 21, 2009

3:00 – 5:30 PM

Commission Members Present: Kirk Jowers, Steve Starks, Representative Rebecca Chavez-Houck, Dan Jones, Doug Wright, Bruce Hough, Tom Love, Dee Rowland (for Most Reverend John C. Wester), Senator Scott Jenkins, Representative Craig Frank, Meghan Holbrook, Randy Dryer, LaVarr Webb

Commission Members Excused: Dave Hansen, Dick Richards, Ken Verdoia, Yvette Donosso, Senator Scott McCoy, Frank Pignanelli

Commission Attorneys and Staff Present: David R. Hall, Karen H. North, Taylor Morgan

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1. **Welcome** (3:00 – 3:10 pm)
 - a. Acting-Chair Kirk Jowers welcomed the Commissioners by stating the importance of noting that, in light of recent political developments - Governor Huntsman's nomination to serve as Ambassador to China, the Commission understands that both Governor Huntsman and Lt. Governor Herbert both support the Commission following through on its mandate.
 1. Commissioner Tom Love noted that the Commission should actively seek out Lt. Governor Herbert's opinion on the Commission's importance and role.
 2. **Commission Business** (3:10 – 3:30 pm)
 - a. Acting-Chair Jowers welcomed four new Commissioners representing Utah's legislative branch: Senator Scott McCoy, Senator Scott Jenkins, Representative Rebecca Chavez-Houck, and Representative Craig Frank.
 - b. Approval of Minutes – April 16th Meeting: Commissioner Dee Rowland moved to adopt; motion seconded by Commission Doug Wright, approved unanimously.
 - c. Representative Chavez-Houck provided the Commission with a brief overview of the legislative ethics process:

1. Last year, the Speaker of the House instituted a standing ethics committee. Representative Chavez-Houck described how the ethics interim committee is in the process of examining how ethics are dealt with.
2. Leadership determined that the ethics committee should be a joint committee, consisting of both House and Senate members. The Joint Committee's role is to examine process. It is a bipartisan committee, consisting of an equal number of Republicans and Democrats, chaired by Senator Sheldon Killpack.
3. At yesterday's Joint Ethics Committee meeting, Committee staff provided a historical background of legislative ethics.
4. The Committee is examining how other states manage the ethics process.
5. There has been discussion to examine an independent ethics commission, but there are constitutional issues requiring that any independent commission must act in an advisory capacity.
6. Representative Chavez-Houck noted that all meetings of the joint ethics committee are open to the public.
 1. Senator Scott Jenkins noted that the legislative committees dealing with ethics have only met four times over the last thirty years, and that though last year's rash of ethics issues presents challenges, it is important to remember that, historically, the legislative ethics committees have met very rarely.
 2. Acting-Chair Jowers noted that legal summaries on ethics are available on the Commission's website - www.strengthendemocracy.org, and urged the Joint Ethics Committee to take advantage of the work already completed by the Commission.

3. **Lobbying Presentation** (3:30 – 6:00 pm)

a. Presentation by David R. Hall and Karen H. North:

1. Mr. Hall opened his presentation by summarizing the Commission's previous discussion on lobbying. The Commission's previous discussion on lobbying is outlined in the minutes of the Commission's March 28th meeting.
2. Mr. Hall reviewed some of the comments that have been posted on the website regarding lobbying. Several comments discussed the widespread public perception that former legislators have "special access" to the House and Senate floors.
 1. Senator Jenkins noted that former members are indeed allowed on the floor, but they are not allowed to lobby while on the floor.
 2. Representative Craig Frank asked Mr. Hall if there is a way to track the origin of comments on the Commission's website. Representative Frank suggested that the Commission provide a means through the website by which commenters could be

tracked by location.

- a. Commissioner Hough noted that he believes most comments on the website originate from legitimate citizens, as opposed to groups.

b. Commission Discussion:

1. Responding to the discussion, Acting-Chair Jowers noted that Utah is an “outlier” in that most states require lobbyists to report the amount of lobbying-related compensation they receive.
2. Representative Chavez-Houck asked how many states in Mr. Hall’s analysis are part-time versus full-time legislatures.
 1. Representative Chavez-Houck noted that because the Utah Legislature is part-time, it is likely that legislator’s professions may conflict with their role as legislators. She cited the example of Representative Tim Cosgrove, who is a child-advocate for Primary Children’s Hospital.
 - a. Mr. Hall responded, in his view, the issue of concern is regarding “contract lobbyists.” Mr. Hall stated that current Utah law is based on a licensing statute. There are several exemptions in the licensing statute itself. Lobbying is defined very broadly, but lobbyist is defined as communicating with a public office to influence an outcome for pay. The exemptions in the statute allow any person to appear and comment at a hearing.
 - i. Commissioner Randy Dryer noted that someone who gives testimony before a committee at a hearing would not have to register as a lobbyist, though it may fit the definition of a lobbyist. Mr. Dryer noted a Virginia law that cites anyone who acts as a representative for another group or organization could be considered lobbying.
 - b. Mr. Hall responded that, in Utah, lobbying is defined very broadly while lobbyist is very specific – lobbying for compensation. Anyone can lobby, but a lobbyist must be registered. Several activities are exempted from requirement for registration.
3. Commissioner Bruce Hough asked if there are any circumstances in which a “one-year cooling off period” would be reduced or expanded to include or exclude interim periods. Commissioner Hough also asked if more “senior or influential” legislators require a longer cooling-off period.
 1. Representative Frank responded that a “cooling-off period” is designed to limit relations between former colleagues. Rep. Frank noted that during each election, approximately 25 members of the House are replaced. Representative Frank

stated that he feels the “one-year period” is mostly “smoke and mirrors” as influence is determined by length of service.

- a. Commissioner LaVarr Webb noted that the period may serve its purpose as a former legislator would be likely to obtain other employment if required to wait a year to become a “lobbyist.”
 - i. Representative Frank responded that he feels this isn’t an issue, as the Utah Legislature is a “citizen-legislature.”
4. Commissioner Webb asked Acting-Chair Jowers if it is possible to clarify the statute to define who exactly is and is not a “lobbyist,” noting that the design of the statute is to prevent someone from leaving the Legislature and immediately soliciting contracts to lobby professionally.
1. Mr. Hough noted that a current lobbyist may decide to run for office – he used the example of a current employee of Exoro Group who already represents clients.
 2. Tom Love discussed the difference between a firm, whose main focus is lobbying, as opposed to an organization like Primary Children’s, which may lobby but is in the business of health care, not political representation.
 - a. Representative Frank noted the difference between a consultant and a lobbyist, and noted that Legislature’s intent was to limit both full-time professional lobbying and lobbying on a contract-basis.
 3. Commissioner Hough brought up the distinction between someone who takes on a limited number of relationships himself or herself, versus someone who seeks employment with a lobbying firm.
 - a. Mr. Hall responded that someone who picks up contracts on their own is exempt, though they are still considered to be a contract lobbyist.
 - i. Commissioner Love noted that therein lies the “loophole.”
 - b. Commissioner Webb noted that if you become a businessperson after leaving the legislature, you should be able to lobby on behalf of yourself, but not others.
 - c. Commissioner Love stated that the intent is to limit contract lobbying. “If you’re a contract lobbyist, you’re a contract lobbyist.”
 - i. Representative Frank noted that the legislature is trying to target those who join contract lobbying firms and those who pick up clients on their own.
 4. Commissioner Wright reminded fellow Commissioners of the mandate to “strengthen democracy.” Mr. Webb stated his

belief that the public is very frustrated, as they feel that there are special privileges for former legislators.

5. Commissioner Dryer stated that some states have opted for a complete and total ban, regardless of employment history. Mr. Dryer cited the example of New York. Mr. Dryer then expressed his view that it is important to stop making nuanced distinctions about the definitions of “lobbying” and “lobbyists” and recommend meaningful reform to address the public’s perception that former legislators are using their legislative service to enrich themselves as lobbyists immediately after their legislative service ends.
 1. Commissioner Hough asked Mr. Hall if he could determine how long New York has had this ban.
 - a. Mr. Hall responded that he will look into the matter and get back to Mr. Hough.
 - i. Acting-Chair Jowers noted that New York has a full-time state legislature.
6. Representative Frank noted that restricting lobbying is potentially a constitutional issue. He stated, “We can’t restrict a person’s ability to make a living. We can legally, but not constitutionally.”
7. Commissioner Jones stated that, in his view, one of the reasons he was appointed to the Commission is to provide public opinion. He stated that lobbying is very misunderstood. He explained that most people feel that lobbyists are evil and that there should be a complete ban. Many in the public feel that some legislators seek office for a short time simply to become lobbyists afterwards. Lobbyists are rated below pollsters.
 1. Commissioner Hough asked if polls on lobbyists refer to them using different words, such as “consultant” or “advocate.”
 - a. Mr. Jones responded that no, it had to be simple and straightforward so that the respondents had no doubt as to what they were being asked.
8. Commissioner Holbrook noted that it’s important to remember that professional lobbyists are a small group. She reminded the Commission that most of those who “lobby” the Utah Legislature are unpaid or volunteer “advocates.”
 1. Commissioner Wright stated that the focus is to get the public involved and participating. The public perception on lobbying is clear, but the Legislature is reluctant to enact reform. Though there are few full-time professional lobbyists, the public’s perception of them is very negative.
 - a. Commissioner Webb also stated that public perception tends to be black and white, though reality is very complicated.
9. Representative Frank expressed his view that Commission recommendations should be able to be passed by the Legislature.
10. Commissioner Starks expressed his view that you cannot force

people to do something they are not inclined to do on their own. He shared his belief that our democracy is flawed because people are not literate in American history. This lack of understanding regarding our history produces apathy when it comes to civic participation. Mr. Starks concluded that he believes education is a key to a vibrant democracy.

1. Commissioner Hough stated that “of all the areas we're charged with looking at, we should be talking about how we communicate with people to get them involved.” He shared his view that, though issues such as those surrounding lobbying may dissuade people from participating, it may be more important to educate people on the importance of participating in the process. He hopes the Commission will educate the public on the importance of participation.
 - a. Acting-Chair Jowers stated that people are indeed discouraged from involvement by negative public perception. He noted the merit of educating the public on participation, but reminded Commissioners that the Commission has been tasked with handling specific issues as outlined in its mandate.
11. Mr. Jowers noted that the Commission should decide whether or not to recommend closing the “revolving door exemption” or eliminating the ambiguity surrounding the “loophole.” He asked Commissioners to consider the next productive step the Commission might take on the “revolving door” issue. He stated that, clearly, the Commission has established that there is indeed ambiguity that needs to be addressed.
 1. Commissioner Webb asked if the Commission should be recommending specific language or merely concepts that the Commission's attorney's can turn into language.
 - a. Commissioner Wright responded with his view that the Commission should recommend intent.
 - b. Representative Chavez-Houck noted that the Commission should make clear recommendations, with as much specificity as possible.
 - i. Mr. Webb noted that the general intent to limit abuses in lobbying was already in place, but the language fell short.
12. Commissioner Wright expressed his view that, upon their exit from the Legislature, legislators should be allowed to maintain the contracts and employment they had when they first entered. Mr. Wright summed up his view by stating that “You cannot use the Legislature as a springboard to a new career.”
13. Commissioner Love stated his view that the length of any ban should be two years.
 1. Commissioner Wright agreed that an effective ban should be

- more than a year, it should be two years.
- a. Representative Frank stated his view that the “spectrum of influence” can be measured in two-year increments.
 - b. Mr. Frank then noted that definitions are key to this issue. It is important to define lobbyists, consultant, contract lobbyists, etc. Mr. Frank also noted that if you craft language saying two years, there is a timing issue. You are dealing with the same legislature that went with timing.
2. Commissioner Dryer stated that “the devil is in the details.” If we (the Commission) provide a concept or intent, the same problem will persist. The Commission, Mr. Dryer stated, should establish a clear consensus and then task the Commission’s attorneys to draft specific language that fulfills that Commission concept.
 - a. Acting-Chair Jowers stated that the concept should be clearly delineated up front, before the crafting of language ensued.
14. Senator Jenkins noted how definitions are key to the success of any language. Senator Jenkins stated that “until you can define something you can’t prevent it.”
1. Senator Jenkins pointed out the ambiguity between an advocate who is lobbying and a lobbyist who is advocating.
 2. Senator Jenkins noted that establishing a time period is simple, but defining lobbying activities is difficult, particularly in light of maintaining constitutional integrity.
15. Commissioner Wright asked why it is so hard to define the difference between a contract lobbyist and a lobbyist.
16. Commissioner Hough responded that if defining activities is difficult part of crafting successful, effective language, why not extend the time period? He asked if establishing a “grandfather clause” for current legislators would alleviate concerns over constitutionality.
1. Mr. Frank responded that the timing issue was purely constitutional. He explained his view that “there is a free exchange of commerce issue.” He also noted the possibility of establishing a disclaimer making legislative candidates aware of new requirements and limitations.
 - a. Senator Jenkins stated that the Commission should work to define the constitutionality then work backwards to determine what the Legislature can and cannot do.
17. Commissioner Dryer stated his view that it is the Commission’s duty to recommend that policy which is most sound, as opposed to policy that is likely to be passed by the Legislature.
1. Commissioner Hough noted that it is important to not recommend something that could potentially be

- unconstitutional.
2. Representative Frank stated that Legislative Counsel and General Research could present on the issue at the Commission's June 18th meeting.
 - a. Commissioner Dryer noted that we should define our (the Commission's) consensus, ask the Commission's attorneys to draft language, and then take to the proposed language to Legislative Research and General Counsel.
 - b. Commissioner Love suggested first drafting the language the Commission wants, then examining where challenges lie.
 18. Senator Jenkins stated that the "loophole" in the "revolving-door" bill was intentional. They (legislators) knew it wasn't perfect, but that it was as close as they could get and was a good start.
 1. Representative Frank stated that he voted against the bill, being one of only three "no" votes in the House. Representative Frank stated that he voted "no" because of the bill's ambiguity.
 - a. Mr. Wright noted the role of negative perception. The reality, he stated, is that the Legislature tried and did the best they could. Unfortunately, the public sees the Legislature in a negative light in regards to this issue.
 19. Commissioner Dryer moved to request the Commission's attorneys to draft specific legislative language that would **"PREVENT A STATE OFFICIAL FROM ENGAGING IN PROFESSIONAL LOBBYING ACTIVITIES BY PROHIBITING A FORMER STATE OFFICIAL FROM REGISTERING AS A LOBBYIST FOR ONE CALENDAR YEAR FROM THEIR LAST DAY IN OFFICE."**
 1. Mr. Dryer clarified that they (former officials) should not be allowed to lobby their former body, even if they had an existing profession as a lobbyist.
 2. Mr. Dryer expressed his desire to move forward, review with Commission attorneys for constitutionality, and then come back for formal vote.
 - a. Commissioner Dryer's motion was seconded by Commissioner Wright and Commissioner Holbrook.
 - b. Commissioner Love asked Commissioner Dryer why he requested a one-year ban instead of a two-year ban.
 - i. Commissioner Dryer responded that an absolute ban, such as this, is reasonable for a one-year period.
 - ii. Commissioner Wright stated that, under Commissioner Dryer's language, a former legislator could still lobby a city council or agency, just not the state legislature.

1. Representative Frank noted that the Commission may want to add a grandfather clause for people who entered the Legislature under a different set of rules. Doing so would soften the constitutional blow, so to speak.
 - a. Commissioner Dryer suggested making the language effective after the next election cycle instead of including such a grandfather clause. Mr. Dryer noted that the preference would be to have a delayed effective date instead of a grandfather clause.
 - i. Commissioner Wright stated that candidates would make a conscious choice to run under new requirements.
 - ii. Acting-Chair Jowers suggested looking at the constitutionality of a grandfather clause versus an effective date.
 - iii. The Commission pursued other discussion items before returning Commissioner Dryer's motion.
 - iv. Mr. Dryer's motion passed unanimously, subject to a final vote on the language drafted by legal counsel.
20. Acting-Chair Jowers motioned to table grassroots lobbying as a sub-topic.
 1. Motion seconded by Commissioner Dryer, approved unanimously. "Grassroots lobbying" is off the Commission's agenda.
21. Regarding interaction with lobbyists, Senator Jenkins noted that a part-time legislator's free time is open for discussion. Lobbyists come after them during their free time, which most often occurs at lunch and dinner. Senator Jenkins stated his favor for full disclosure of all interaction with lobbyists. Mr. Jenkins reasserted his view that the answer to many lobbying-related issues is full disclosure. He

said, “I like disclosure and always have. When you’re involved with public issues, you should be willing to provide full disclosure.”

1. Commissioner Wright agreed, noting that the public is concerned about the issue and would prefer full disclosure.
 2. Acting-Chair Jowers stated that full disclosure is consistent with the vast majority of states as well as the federal government.
 3. Commissioner Hough noted how, in his personal and business dealing, he is very strict about not giving and receiving gifts. Mr. Hough echoed Senator Jenkins’ view that disclosure is the best method – everything must be done in the “light of day.”
22. Commissioner Hough motioned to ask Commission attorneys to draft the following potential legislative language: **“ALL EXPENDITURES BY REGISTERED LOBBYISTS TO ENTERTAIN GOVERNMENT OFFICIALS SHOULD BE DISCLOSED WITHIN 48 HOURS BY THAT REGISTERED LOBBYIST.”**
1. Representative Frank reminded the Commission that current law states that if the entire legislature is invited, or an entire committee is invited, to an event, there is no requirement to report. Government entities and agencies are exempted.
 - a. Senator Jenkins noted his distaste for government lobbying government. He expressed frustration that “tens of millions of dollars are spent by government organizations lobbying the government.”
 2. Commissioner Dryer seconded Commissioner Hough’s motion; approved unanimously by all Commissioners present.
23. Commissioner Wright moved to task Commission attorneys with drafting language requiring that **“REGISTERED LOBBYISTS MUST DISCLOSE COMPENSATION FOR LOBBYING THE STATE LEGISLATURE.”**
1. Acting-Chair Jowers noted that in 33 other states, registered lobbyists’ retainers are required to be disclosed.
 2. Commissioner Wright’s motion seconded by Commissioner Dryer; approved unanimously.
 3. Commissioner Hough expressed his concern over a potential intrusion into the private finances of those concerned. He stated the importance of examining how such disclosure is done in the 33 states, and at the federal level.
 - a. Commissioner Wright shared his belief that if someone is paying or getting paid for influence in the public realm, the public should demand full disclosure.
 4. Acting-Chair Jowers noted that Commissioner Wright’s language is constructive and relevant, as Utah is an outlier in the area of lobbyists’ disclosure.

4. **Public Comment** (6:00 – 6:05 pm)
 - a. No public comment

5. **Conclusion** (6:05 – 6:10 pm)
 - a. Next Meeting – “Campaign Finance” sub-topic - Thursday, June 18, 2009.
3:00 – 5:30 pm, City & County Building Chamber, Salt Lake City