

GOVERNOR'S COMMISSION ON STRENGTHENING UTAH'S DEMOCRACY

Salt Lake City Council Chambers, City and County Building

MINUTES

THURSDAY, June 18, 2009

3:00 – 5:30 PM

Commission Members Present: Kirk Jowers, Dave Hansen, Rebecca Chavez-Houck, Dan Jones, Dick Richards, Doug Wright, Bruce Hough, Ken Verdoia, Tom Love, Dee Rowland (for Most Reverend John C. Wester), Senator Scott Jenkins, Meghan Holbrook, Randy Dryer, LaVarr Webb, Yvette D. Donosso

Commission Members Excused: Representative Craig Frank, Frank Pignanelli, Steve Starks, Senator Scott McCoy

Commission Staff Present: Taylor Morgan, Jordan Imani

1. **Welcome** (3:00 – 3:05pm)

- a. Acting Chair Kirk Jowers welcomed members of the Commission, the media, and the public in attendance. Mr. Jowers recognized the Three Branches event and thanked Karen Hale of the Mayor's office, and Kristin Fink for their help in arranging today's meeting. Mr. Jowers also thanked Commission attorneys and staff and introduced the Commission's new intern, Jordan Imani.

2. **Commission Business** (3:05 – 3:15 pm)

- a. Acting Chair Jowers read Lt. Governor Herbert's letter, dated June 16, 2009, regarding the Commission. The letter indicated that Lt. Governor Herbert endorses the Commission's work. It expressed his full support for the Commission's mandate to propose analysis of and reforms to Utah's campaign finance, lobbying, and election laws.
- b. Approval of Minutes – May 21st Meeting. Commissioner Dee Rowland moved to adopt; motion seconded by Commissioner Tom Love; approved unanimously.
- c. Acting Chair Jowers reminded Commissioners that the Commission's next meeting will be held in Cedar City on the campus of Southern Utah University. Mr. Jowers asked the Commissioners to notify Commission staff if they cannot attend, as the Commission requires a quorum for action.

3. Campaign Finance Presentation (3:15 – 4:00 pm)

a. Presentation by Stefan P. Brutsch:

1. Mr. Brutsch first highlighted real-time disclosure, which is an immediate disclosure of contributions:
 1. Mr. Brutsch referred to laws in Ontario, Canada where disclosure within ten days of receipt is required. Government then has ten days to publish for public. This is actually far from real-time disclosure, as it takes 20 days.
 2. Mr. Brutsch then discussed that Michigan has proposed that all contributions be disclosed electronically as soon as they are received or expenditures are made.
 3. Mr. Brutsch then discussed how “large” contributions are defined in California as over \$5,000.
 - a. Commissioner Dave Hansen asked if there is there a limit to contributions in California.
 - i. Mr. Brutsch responded that he was not sure, but he believes there is a limit, though it is quite high, and it depends on the level of office.
 - b. California does have mandatory electronic filing.
 4. Commissioner Dave Hansen asked how expenditures are defined.
 - a. Mr. Brutsch responded that the Michigan proposal is vague on definitions of expenditures, and that no specific legislation has been proposed.
2. Mr. Brutsch then discussed Enforcement:
 1. He stated that “there are enforcement mechanisms when there is an alleged violation of election laws.”
 - a. Examples of enforcement include the federal government – anyone can submit complaints then the FEC looks at notarized complaints made under oath. This requires four of six FEC Commissioners to proceed. The FEC is split evenly along partisan lines.
 - b. If the FEC proceeds, there are three courses:
 - i. Formal investigation
 - ii. Alternative dispute/mediation
 - iii. Mandatory fine program
 2. Acting Chair Jowers noted that Mark Thomas is here as a resource for questions about real-time disclosure and enforcement.
 3. Commissioner LaVarr Webb asked if under Utah’s current system, the statute is clear about how the Lt. Governor responds to election disputes
 - a. Mr. Brutsch responded that if a candidate can be found guilty of a class B misdemeanor for not filing all 17 reports in election year, or all five in a non-election year.
 - i. If they don’t submit, they have 14 days to make corrections, if not corrected, referred to Attorney General and found guilty of a class B misdemeanor.

4. Commissioner Dryer asked what other sanctions there are besides the criminal course. Are there other mechanisms in place, and what range of penalties or sanctions exist?
 - a. Mr. Brutsch responded that if a candidate doesn't submit, the LG is supposed to notify the county and take the name of the ballot so votes aren't counted – uniform across states.
 - b. There are fines for administrative penalties – the federal system is good example.
5. Commissioner Verdoia asked if Utah is the only state requiring the Lt. Governor to implement this process, and what is Mr. Brutsch's opinion of the disadvantage of LG handling election disputes
 - a. Mr. Brutsch responded that some states have more robust enforcement through a separate Secretary of State office. This provides an advantage to those states.
6. Representative Chavez-Houck asked how many states are already utilizing the electronic reporting systems, and was curious about efficacy rates on audits
 - a. Mr. Brutsch responded stating that the majority of states require electronic filing – high 30's or low 40's now – new states are added each year. As for efficacy rates, it is a more difficult question. The process is confidential unless a violation is found. Some states audit ten percent of campaign reports each year.
7. Acting Chair Jowers stated that the Lt. Governor's office addressed the Commission at an early meeting. He stated that Lt. Governor Herbert was asked what he would like to see change, and he responded that the LG's office would like to have more resources to enforce the law – the hurdle to get to the AG was high, as most infractions didn't merit referral to the AG's office. Lt. Governor Herbert explained that there are day to day disclosure problems, and it is difficult with the limited resources of the Lt. Governor's office. Acting Chair Jowers asked Mr. Mark Thomas of the Lt. Governor's office to speak to Lt. Governor Herbert's statements.
 - a. Mr. Thomas responded that the administrative process to handle election complaints is a priority, including financial disclosures. If a candidate fails to file reports, they are removed from the ballot. The candidate can get back on through the courts. In those cases, the LG has no discretion, and there is an automatic removal. At the yearend report, if they fail to file, notice is sent, they have 14 days to respond, then if candidate fails to respond than it is sent to the AG's office. Some say reports are filed alleging that candidates wait to file reports or to cash checks. The LG's office only has the option to send a letter instructing the candidate to file. There is nothing else the LG can do if the candidate responds beside forward them to the AG's office. With an administrative process, it would be easier to have someone over researching cases. Administrative rule wouldn't

be criminal; it would be a civil or monetary penalty.

- i. Acting Chair Kirk Jowers asked how many such letters go out asking candidates to correct reporting.
 1. Mr. Thomas responded that for the 2006 interim reports 11 candidates were kicked off the ballots after end of summer report, and 7 after general election report. At the yearend disclosure, no letters were sent to the AG office, although 4 letters were sent to candidates asking to comply, and in all cases, candidates complied with a 14 day period to amend, report, or respond explaining. For the 2008 interim reports 2 candidates were kicked off the ballots after end of summer report, and 4 after general election report. At the yearend disclosure, no letters were sent to the AG office, although 2 letters were sent to candidates asking to comply, and in all cases, candidates complied with a 14 day period to amend, report, or respond explaining. There were no official financial disclosure complaints in 2006 or 2008.
 - a. Commissioner Love asked if violations are corrected in proper time frame, can the LG office receive complaints from citizens.
 - i. Stefan Brutsch responded that there is no formal mechanism for a public complaint.
8. Commissioner Wright stated that some states have independent commissions and asked Mr. Thomas and Mr. Brutsch if, to their knowledge, have any of these states had constitutional issues?
 - a. Mr. Brutsch didn't know what constitutional issues states have had, but stated that, in general, such commissions are functioning and are not on hold in any states.
9. Senator Scott Jenkins asked if there are two-three candidates that have not met requirements, how many have met the requirements?
 - a. Mr. Thomas responded that out of approximately 400 candidates who filed, three had letters sent, and all responded within a 14 day time frame. Mr. Thomas explained that the 4 people who received letters did so because they did not file a yearend report. The LG's office has limited resources. They do cross-check reports on a minimal level. They have a hard time keeping up with the 2008 reports. Sometimes, candidates' reports show money in accounts from up to ten years ago, though they never submitted a report accounting for that money.
 - i. Mr. Thomas stressed that with 400 candidates per year,

is in addition to PAC's, corporations, parties, etc; it is a huge task to keep up with reporting, especially with minimal resources.

10. Commissioner Holbrook asked how many staffers there are in the Lt. Governor's office who handle reporting.
 - a. Mr. Thomas stated that 11 people are on staff.
11. Commissioner Dave Hansen asked if reports are available to the public. Are other groups, reporters, etc looking at reports? If there are problems, don't they bring it to your attention?
 - a. Mr. Thomas said this is correct, and it is helpful.
 - b. Mr. Hansen responded that in perspective, a small number of reports are in violation or are irregular.
 - i. Mr. Thomas said this is correct.
12. Commissioner Hough asked how long Mr. Thomas has been doing this.
 - a. Mr. Thomas responded that he has been involved for four years.
 - b. Commissioner Hough responded, asking if in four years, did three ever fulfill obligation to fill out forms? According to his opinion, was it done (or not done) with malicious intent? What was the scale of money involved?
 - i. Mr. Thomas responded that since 2005, none of the violators became office holders, but nothing would have prevented them from becoming office holders had they won elections. In his recollection, almost all cases are mistakes that forget to file, only a few seem to have been malicious and only 25% perhaps were willfully deceptive. He didn't recall, and large amounts.
 1. Commissioner Holbrook asked what the discretion of LG is about taking names off ballots
 - a. Mr. Thomas stated that a judge decides if there is sufficient compliance to place a candidate back on the ballot and that a new law requiring "strict compliance" passed. Still, a candidate got back on the ballot after failing to file, even since new law.
13. Commissioner Dryer stated that if it isn't broke, don't fix it. He asked if there was a problem. He asked, how many candidates failed to file report in 2008? How many filed in an untimely manner? How many filed incomplete reports? How many filed incorrect reports? How many made amendments?
 - a. Mr. Thomas stated that he didn't have the exact numbers, but would be happy to get information to all questions. Interim reports show when people get kicked off – there are three reports during summer, August 31, generally five get kicked off.

It is hard to gauge how many filed incorrect or incomplete reports. As for official complaints in 2008, there were none for incomplete reporting. The problem is that the candidate is able to file and amend after filing. Nothing prevents a candidate from amending his or her report. A candidate can amend online at anytime. The LG's office has no way to control this.

i. Commissioner Hough asked if it shows up as amended.

1. Mr. Thomas answered yes, it shows up as amended. You could measure the number of amended reports, but can't know the reasons behind the amendments. Some candidates are more prone to amendments.

14. Acting Chair Jowers provided a hypothetical - say someone declares for Governor, raises significant amount of money, turns in reports and has submitted a report, but it is incomplete. What can or would the LG's office do with the report?

a. Mr. Thomas stated that some candidates do send in incomplete reports due to time constraints, then purposefully come back to amend. This is rare, when he or she signs, they state that the report is complete. If a candidate intentionally files a false report, they could be referred to the AG's office; however, the candidate could still come back at any time to amend the report.

i. Acting Chair Jowers asked if a report is intentionally falsified, how and when would the LG's office be able to determine that it is a false report?

1. Mr. Thomas stated that the only thing the AG's office can do is ask candidates to file a complete report within 14 days, or refer them to the AG's office.

2. Mr. Jowers stated that an opponent could file a complaint, but it would elicit the same response.

a. Mr. Thomas agreed. Bringing up the question is there another avenue to pursue to add deterrent to such incomplete filing.

15. Commissioner Dave Hansen stated that the Lt. Governor's office receives 400 reports per year. He reminded the Commission that eight of 400 had letters sent asking them to file within 14 days. Out of eight, all responded to request within 14 days. None were sent to the AG's office. Mr. Hansen asked, is there a problem? Is there a problem?

a. Mr. Thomas stated that there are 400 candidates, with multiple reports filed per year. There were no official complaints. If someone were to approach him asking "what is a problem," it would be that there's no middle ground - either there is a class B misdemeanor or simply sending a letter.

16. Commissioner Dan Jones stated that he would like to know if there is a state that has an ideal system or if Utah's system is as good as any on the reporting issue?
 - a. Mr. Thomas responded that UCLA has completed a study, grading states on filing and disclosure. They have looked at CA as a state with a good system.
 - i. Acting Chair Jowers asked, what grade did Utah get?
 1. Mr. Thomas responded that Utah received the grade of "F" in 2006 and a "D-" in 2008.
 2. Commissioner Holbrook asked why?
 - a. Mr. Thomas stated that Utah's disclosure website does not have searches; there is general concern with financial disclosure and reporting laws: Utah's reporting is seven days before election; there is a 12 day window that is not reported until after.
17. Representative Chavez-Houck asked about the timing of contributions.
 - a. Mr. Brutsch stated that timing requirements vary based on amounts. Utah is one of few states that have no limits on donations.
18. Commissioner Hough asked if we are now required to report within 30 days.
 - a. Mr. Thomas responded that yes, candidates are required to report contribution within 30 days from date of cashed check or received cash in hand. Checks cannot be held longer than any one report.
19. Commissioner Wright asked if there is a perception or a concern in the LG's office that things are going through the "cracks." Are there things working against the state of Utah or the public's perception of enforcement? Is there a lack of scrutiny working to disadvantage of state?
 - a. Mr. Thomas stated that we can always do better and that there is certainly room for improvement. He explained that, in the Lt. Governor's office, one person is in charge of financial disclosure and that the rest of staff helps out during certain filing periods.
20. Commissioner Love cited Lt. Governor Herbert's comment of March 3 stating that the LG's office does need help with enforcement.
21. Senator Jenkins discussed the legislative perspective. Often, reporting is cumbersome and worrying. In fact, once a candidate has become affiliated with a party, the party often contacts them to remind about reports. 95% of all people who run for public office are not full-time officials; they are part-time. He turned away a donation because of the hassle of filing. The process is a hassle when legislators are living other lives.

4. *Break (4:25 – 4:35 pm)*

5. **Deliberation on Focusing Future Actions (4:35 - 5:00 pm)**

- a. Acting Chair Kirk Jowers urged Commissioners to make proposals so the Commission has more legitimate proposals to work from. He asked for comments on campaign limits
- b. Commissioner Dryer asked if there will be a quorum attending the next meeting in Cedar City.
 1. Mr. Jowers asked, by a show of hands, which Commissioners will not be attending. Commissioners Love and Rowland indicated that they will not be in attendance.
 1. Mr. Jowers stated that, based on that showing, there will be a quorum in Cedar City.
- c. Representative Chavez-Houck noted that she would like to explore amounts of limits based on offices in comparison of what other states are doing or have done.
 1. Acting Chair Jowers responded that there are three documents posted on the Commission's website. The initial document shows where Utah is an outlier, with contribution details done by Stefan Brutsch.
- d. Commissioner Hough stated that he personally believes there should be no limits on contributions to statewide or legislative offices. He believes that monetary contributions are a form of free speech and should be protected as such. Full disclosure is absolutely paramount. He stated that he understands Senator Jenkins' concern about complications, and that the stated would need a more user friendly system that allows for a more rapid deployment of information. Last-minute receipts and expenditures should not go unnoticed. Mr. Hough stated that "we need to look at ways to make information readily and rapidly available without imposing limits on contributions."
 1. Commissioner Verdoia responded that most courts have interpreted that limiting money is not unconstitutional. Mr. Verdoia stated that having an appropriate safeguard against unlimited donations from any source is not unreasonable or unconstitutional. Commissioner Verdoia also stated that 16 states ban union contributions.
 2. Commissioner Love asked Mr. Hough if corporate contributions fall under the free speech comment he made earlier.
 1. Mr. Hough responded affirmatively.
 - a. Mr. Love noted that, then, there's a debate.
- e. Commissioner Wright addressed the Commission, referring to the original mandate, and asked why people are backing away from process? He stated that he was not making any particular recommendation, but if the Commission does not address contributions, it is doing its mandate a disservice. We are not only dealing with challenges, but the perception of challenges. We have to vigorously discuss money.
- f. Acting Chair Kirk Jowers noted the possibility of two potential competing reports: one to impose limits, and another to maintain no limits but to strengthen the disclosure requirements.
 1. Commissioner Holbrook asked for clarification on the next meeting, if they will be voting on two potential competing proposals.

1. Acting Chair Jowers stated that no proposals have been received. Mr. Jowers stated that “we need to formulate specific proposals, as the deadline is drawing upon us.”
 - a. Commissioner Dryer noted that campaign finance is a core issue. He stated the need to have the entire Commission together to debate proposals. He expressed his intention to circulate a proposal.
2. Mr. Hough stated that it would be helpful to look at specific models in other states that have worked.
 - a. Commissioner Love noted that he supports Mr. Hough’s comments on disclosure and rapidity of reporting, stating that he would like to reserve the right to vote even if he cannot attend the Cedar City meeting.

6. Approval of Proposals:

- a. **In order to bring greater transparency to the Utah electoral process, the Commission hereby recommends that the Utah Code be amended to require that all state political committees, including candidate committees, be required to exercise their “best efforts” to obtain, maintain, and report the name, address, occupation, and employer of any individual who gives more than \$50 in contributions or public service assistance. A committee would be deemed to exercise its “best efforts” if: (1) all of the committee’s solicitations include a clear and conspicuous request for the contributor’s name, address, occupation, and employer; (2) the committee lacks the name, address, occupation, or employer for any contributor of over \$50, the committee makes at least one good-faith attempt to collect the missing information within 30 days of receiving the contribution or public service assistance.**

1. Commissioner Hough asked what public service assistance means, Acting Chair Jowers responded that it is in-kind contribution.
 1. Stefan Brutsch noted that under Utah code, it is defined as such.
 2. Mark Thomas read from Utah code the definition of public service assistance. Section 209.11.101
 - a. Commissioner Hough asked if it is restricted only to office holders, and not candidates.
 - i. Mr. Brutsch responded, yes.
 - ii. Commissioner Dryer noted that this applies to office holders and candidates. It says what we need to do, if it were to pass, implementation would require changing and expanding the definition in the code.
 1. Mr. Hough added that this would require a change of definition in the Utah code.
 - a. Commissioner Verdoia asked if we could fix the problem by citing a footnote.
 - b. Commissioner Dryer asked if in-kind is defined, noting that lawyer campaigning

doesn't have to report, but if a lawyer donates legal services, it's considered an in-kind contribution.

- i. Mark Thomas stated that anything in-kind is defined as below fair market value.
2. Motion to adopt by Mr. Jowers, seconded by Commissioners Verdoia and Holbrook, passed unanimously among commissioners present.
3. The following members were excused from the meeting but submitted votes via email:
 1. Commissioner Frank Pignanelli voted no, stating "I cannot support the Recommendation for Disclosure of Employment Data and therefore I Vote "No" on this measure. I cannot support this because the \$50 threshold is too low. It is difficult enough to solicit contributions from individual donors, and this is just an added burden to candidates and donors. Furthermore, anyone attempting to "wire around" campaign disclosure by aggregating a bunch of donations will not do it through \$50, it will be at higher amounts. If the threshold was \$250, I could support the recommendation. Please remember, the purpose of this commission is to determine how to increase citizen participation in democracy. This is contrary to that mission."
 2. Representative Craig Frank votes no, stating "I would concur with Commissioner Pignanelli's arguments regarding contributions, thresholds, and employment data. I believe our current elections statute and legislative rule accommodate a reasonable approach to this issue."
 3. Commissioner Steve Starks voted yes

b. The Commission hereby recommends that all committees registered with the State of Utah, including all candidates for state office, be required to electronically file campaign finance reports.

1. Commissioner Dryer moved for adoption seconded by Senator Jenkins; approved unanimously among commissioners present.
2. The following members were excused from the meeting but submitted votes via email.
 1. Commissioner Frank Pignanelli voted yes
 2. Commissioner Steve Starks voted yes
 3. Commissioner Craig Franks voted no, stating that "Mandatory "electronic" filing, in my opinion, already takes place in Utah. Many candidates already utilize the state's relatively comprehensive filing system recently designed by the Lt. Governor's office. This system was in place during the last election reporting cycle and seems to work very well. It's accurate and fully transparent. Any other candidates who choose to file by "hard copy" to the Lt. Governor's office do so under reasonable filing deadlines. The "hard copy" filers' reports are quickly and efficiently integrated into the "electronic" system by

election's office staff and are viewable by the public and the media without delay. We effectively already have a "mandatory electronic filing system, in my opinion."

7. Public Comment (5:05 – 5:30 pm)

a. Rob Latham, from the Libertarian National Committee and the Utah Association of Criminal Defense Lawyers commented.

1. Mr. Latham stated that in Utah, a majority of voters are not affiliated with either the Republican or Democratic parties. He wanted to make sure that the discussions include third parties, such as the Libertarian party and non-incumbent party candidates. His solution is that at the federal level, it doesn't recognize candidates' contributions below \$5,000. Mr. Latham asked if you are a viable candidate in Utah if you're not spending \$5,000. He asked if you would consider a minimum of election or fundraising activity the threshold.

1. Commissioner Verdoia asked if he could set a threshold, what he would set it at.

a. Mr. Latham said he would need to look at more data. Some states have them around \$400 or \$700.

2. Mr. Latham described how, in his view, proportional representation would be more inclusive. He stated that 51% of the public receives 100% of the representation.

8. Conclusion

a. Next Meeting – "Elections" sub-topic – Friday, July 31, 2009.
3:00 – 6:00 pm, SUU, Cedar City.