

GOVERNOR'S COMMISSION ON STRENGTHENING UTAH'S DEMOCRACY

Gould Auditorium, J. Willard Marriott Library, University of Utah
Salt Lake City, Utah

MINUTES

THURSDAY, OCTOBER 1, 2009
2:00–5:00 PM

Commission Members Present: Acting Chair Kirk Jowers, Dan Jones, Dick Richards, Doug Wright, Ken Verdoia, Dee Rowland, Senator Scott Jenkins, Randy Dryer, LaVarr Webb, Representative Craig Frank, Frank Pignanelli, Dave Hansen, Bruce Hough, Tom Love, Senator Scott McCoy, Representative Rebecca Chavez-Houck

Commission Members Excused: Steve Starks, Meghan Holbrook, Yvette D. Donosso

Commission Attorneys Present: David Hall, Kara North

Commission Staff Present: Taylor Morgan

1. Welcome (2:00 – 2:15pm)

- A. Acting Chair Jowers welcomed all those in attendance. Mr. Jowers thanked the Governor for his attendance. Mr. Jowers extended appreciation to Ian Godfrey, Peter Kraus, and Joyce Ogburn of the Marriott Library for their help in arranging this meeting. Acting Chair Jowers then introduced Joyce Ogburn, Director of the Marriott Library.
- B. Ms. Ogburn welcomed everyone to the newly renovated Marriott Library. The library, she explained, has undergone an \$80 million renovation. Director Ogburn explained that the state provided \$49 million of that cost. Ms. Ogburn described the positive feedback received regarding the library's renovation. She explained that millions of students use the library each year. In fact, she stated, "More people use the library in one year than attend six years of home football games at the University of Utah." Ms. Ogburn announced the formal dedication to be held on October 26, 2009, featuring former First Lady Laura Bush. Director Ogburn thanked the audience for their time and wished the Commission a productive meeting.

- C. Acting Chair Jowers briefly reviewed the Commission's five areas of focus. Mr. Jowers described how the Commission's mandate was refined to focus on the three areas of campaign finance, lobbying, and elections. Acting Chair Jowers then recounted how the Commission has held a dozen meetings; he thanked Commission staff and attorneys for their efforts. Acting Chair Jowers then introduced Utah's new Governor, Gary Herbert. Mr. Jowers stated, "The Governor provided a letter expressing his appreciation for our work thus far. I'd like to turn the time over to our Governor, Gary Herbert. He has been very gracious to come to speak to us. Following his remarks, perhaps he will answer a few questions."

2. Address by and Discussion with Governor Gary Herbert (2:15-2:45 pm)

- A. Commenting on the room configuration, Governor Herbert quipped, "I hadn't planned on looking at your back, but I've definitely got your back." Governor Herbert then thanked the Commission for their hard work and read his endorsing letter aloud.
- B. After reading his letter of endorsement, Governor Herbert discussed his position on campaign donations. He stated, "It is a question that has been asked to me often. I've never changed my position over the years. When I ran for office in 2004 and later when I ran with Governor Huntsman, I was opposed to campaign donation limits. I believe there is a free-speech issue involved. Limiting campaign donations may give more power to incumbents and big-name candidates." Governor Herbert continued, "You can look around at the election process today and find at least some substantiation to these arguments. That's been my position. I was asked the question again when I nominated then Senator Greg Bell to be Lieutenant Governor, because Greg Bell was working on some areas of ethics and campaign reform. He had suggested having some sort of limitation on campaign donations. In response, I said my position hadn't changed. Lt. Governor Bell and I don't agree on everything. I don't need a clone, one of me is plenty. What I do support and what I will work hard for is instantaneous disclosure.
- C. Governor Herbert explained that he had expressed his position on campaign finance reform in an interview some time ago. He stated, "I completed that interview only to find that this Commission had pursued some discussions that I didn't know about. It came out in the press a few days later that there had been a proposal that passed 10-7 on some sort of campaign limitation. That's ok with me. I am looking forward to receiving your recommendations. A report came out in the press from the previous interview, the interview held before your meeting, about my position. I'm sorry if it appeared as if I was taking some sort of shot at this Commission, as if I had a preconceived notion of rejecting the proposal. I'm here to tell you today that although I've had that position in the past and it's no secret to anybody, if you've got a recommendation that you're going to make to me, I welcome it. I can be persuaded by logic and reason to a different position. I don't believe you're afraid of offending me. Maybe I have more faith in you than some of the media do, but I believe you'll come up with great recommendations.

As you come up with them, feel free to present (them) to me and we'll reason together.

- D. Governor Herbert continued, "I think transparency is critical. I understand that there are those in the public who are skeptical of those in office. I'm here to tell you that, with the exception of a handful, our public officials are good and decent people trying to do the best they can with the cards they've been dealt, doing so in a very ethical and professional way. Are they perfect? Certainly not. I'm not. That's why we have rules and guidance in place – to see if there 's a better way of conducting ourselves in public office to make sure all public officials are doing what is in the best interest of the taxpayer. To that end, when it comes to campaign disclosure, we want to establish instantaneous disclosure of our campaign donations as soon as possible so everyone will know who's supporting Governor Gary Herbert in his election in 2010. People can then factor that into their decision of who to support.
- E. Governor Herbert thanked the Commission, stating, "I appreciate the good work you're doing. I know you have difficult issues. I believe the makeup is significantly broad-based with people on both sides of the political aisle. The combined expertise and wisdom of this group is impressive. Thank you for your good work I appreciate the opportunity to be here for a few minutes. I am willing to listen with an open mind."
1. Acting Chair Jowers thanked Governor Herbert. He asked Commissioners if they had any questions.
 2. Commissioner Randy Dryer thanked Governor Herbert for his attendance and his comments. He explained that it was helpful that the Governor placed events in proper context. Mr. Dryer then asked, "When we ultimately give you our final recommendations, assuming they are persuasive and you feel you can support all or some of them, do you intend to affirmatively lobby the Legislature, as implementing any or our recommendations would require legislative action? Would it be your intent on those recommendations which you support to actively lobby the legislature for adoption?"
 - a. Governor Herbert responded, "Absolutely. If I support what you come up with, perhaps after some discussion or tweaking, I'm more than happy to work with the Legislature. Let's find a sponsor and let's get it through the House of Representatives and the Senate. I'm not opposed to using my influence to get good legislation passed. I believe the Legislature would welcome that, too. The answer is absolutely yes."
 3. Commissioner Dave Hansen asked Governor Herbert, "You alluded to a couple close votes we've had thus far. When we submit our final report, would you like us, in close voting situations or when a difference of opinion existed, to submit a minority report?"
 - a. Governor Herbert responded, "I think it would be helpful to have the pros and cons on both sides. I like knowing the opposing point of view. I think knowing the vote tallies is also helpful. Knowing if we have a consensus or if we have a divided view on issues. If

we have a divided view here, we'll likely have a divided view in the public, as well. It is probably helpful for us as we digest and move forward. I think that would be a wise thing, Dave.

4. Commissioner Dee Rowland stated, "I appreciate your coming and explaining your timing of those remarks. I just heard you say something, 'If you agree with our report.' What if you don't agree with our recommendations?"
 - a. Governor Herbert responded, "I'm in a difficult situation because I've inherited this Commission. I didn't start it. But I want to continue the spirit of it and help it produce an end-result that's positive. I'm more than happy to take recommendations and share them with the public. The Governor who asked for it (the Commission) isn't here anymore. If there are issues that I don't agree with, you're going to have a hard time getting me to champion them. Opposition is good. It's good to know why someone doesn't agree with me. The goals and objectives are the same – we want good, clean elections. We want the best qualified people in office. We've proven that anyone in America can become President of the United States. I'm proof that anyone can become Governor of Utah."
5. Commissioner Tom Love stated, "From my personal perspective, I didn't think for one second that you were trying to torpedo us. I'm very encouraged to hear you're open to being persuaded by logic and reason. Perhaps when we prepare our final recommendations, we should get together and have a dialogue."
 - a. Governor Herbert responded, "Thank you, Tom. I believe that most of us want our politicians to move toward a correct position, whatever it may be, for the benefit of the tax-payer. As officials, we run the risk of being called a 'flip-flopper.' However, there's nothing wrong with saying I have new information and therefore I've changed my position. I'm a work in progress."
6. Acting Chair Jowers stated, "Thank you for being here, Governor Herbert. You were kind enough to be our first speaker, back in February when you were the Lieutenant Governor. So much of what the Commission may recommend goes through that office, as you know. One of the things you asked for, back in February, was a better system to deal with lobbying and election complaints. Later today we will consider a recommendation regarding an independent body that could do what you mentioned. Do you have any preconceived notions if the Lt. Governor is equipped to handle lobbying and elections complaints, or if an independent body would be more successful at handling such issues?"
 - a. Governor Herbert responded, "Without a chance to analyze the recommendation first, it's hard to say what would be best. As Lt. Governor, I had a significant concern about participation. I've looked at the numbers, and it goes up and down depending on cycles. Highly contested races or emotional issues drive

participation. We've had some headlines that don't reflect the civic engagement of the people in Utah. We've been at the top of the list in voter participation and we've been at the bottom of the list. It is the desire of the people of Utah to be involved. That's my own view and what I observed as Lt. Governor.

- b. Governor Herbert continued, "We made efforts to work with young people to get them committed and involved. We had them take a pledge to never miss an election. We need to show up and vote, whether it's a statewide, municipal, or a federal election. I took the same pledge and I've never missed voting since. As Lt. Governor, people thought that as the chief elections officer, I had authority. In reality, I had no authority in that context. There may be wisdom in giving the Lt. Governor some authority to resolve whether a candidate was in compliance without going through the Attorney General's office. I'm not sure if we give the Lt. Governor more power or if we establish an independent commission. I understand the concern about playing politics. I firmly believe that the Lt. Governor today will raise the bar from where it was when I was in charge. If we are going to make changes, now is a good time to do it. I'm looking forward to your report."
 - i. Acting Chair Jowers thanked Governor Herbert for his response and for his attendance today. He commended the Governor for his efforts to increase voter participation.

3. Commission Business (2:45 – 3:15 pm)

A. Approval of Minutes – September 24th Meeting:

1. Acting Chair Jowers stated, "We had a great meeting last week at Weber State University. We had a spirited debate about campaign finance. We can provisionally approve the minutes of that meeting with the ability to make any edits you feel necessary, as we just got those to you yesterday. The approval would be subject to edits received within the next week.
2. Commissioner Randy Dryer stated, "I support that motion, I think the minutes were very detailed and excellent, for the most part. There was some confusion about what we did and how it developed. The media has criticized the Commission for backtracking. It would be helpful, for historical purposes and accuracy, to include a paragraph indicating that the original Dryer proposal remained the Commission's recommendation on campaign finance.
3. Commissioner Ken Verdoia added, "It should be clearly stated at the end of the minutes that the amended Dryer proposal is the Commission's standing recommendation on campaign finance reform. Mr. Verdoia added, "A law is not any less of a law if it passes by one vote. Hanging the veracity of Commission recommendations on a number of votes as a qualitative assessment which begs further consideration."

- a. Commissioner Bruce Hough noted, “There’s a difference between a mandate and a non-mandate. Notwithstanding the courts, I think people look at close votes. It doesn’t mean there’s a less valid vote, but it does beg the question, is this the right direction?”
 - i. Acting Chair Kirk Jowers responded, “In our case, without the ability to enforce, it is important that we have a mandate in order to put pressure on the Legislature. I think there will be some review of those votes, whether it’s warranted or not.”
 - 4. Motion by Commissioner Ken Verdoia to approve minutes, subject to edits received within one week, inclusive of clarification regarding original Dryer recommendation regarding campaign finance; motion seconded by Doug Wright; approved unanimously.
- B. Provide Governor with Recommendations for Requiring Mandatory Electronic Filing and Overseas Military Voting Reform
 - 1. Acting Chair Kirk Jowers noted that the Commission has passed four recommendations. He posed the question to the Commission, “Do we want to pass along those that we’ve passed now, immediately, so the Legislature can begin working on the proposals?”
 - a. Representative Craig Frank stated, “I suggested that we move the process along rather than waiting for the Governor’s office to review after we’ve made all proposals.” Representative Frank noted that it may be favorable for the Commission to send directly to the Legislature during interim.
 - i. Senator Scott McCoy responded, “I have a concern with that. These are public recommendations. Any member of the Legislature can propose legislation. My fear is that, in some way, we’re making a statement by forwarded on a motion that passed 18-0. It makes it appear that that particular recommendation has more weight than others. Because they are public and can be taken up at any time, I think it would be better to wait until we’re done with all of our recommendations and can present them all to the Governor’s office.”
 - ii. Senator Scott Jenkins responded, “The practical reality is that the quicker you get it out the less bogged down you’ll be in minutia. If we want them passed we need to get them going.”
 - iii. Commissioner Randy Dryer added, “My thoughts are that if we release the recommendations in a piece-meal fashion, and these two were non-confrontational, the Governor will be asked his position. He may want to wait until he has our final report before he takes a position. That’s the only downside I can see to releasing in a piece-meal fashion. We take our votes in public. Everyone knows whether they are close or are unanimous. Once we officially transmit to

all of our recommendations to the Governor, he will be asked his position. We may want to wait.”

- iv. Commissioner Bruce Hough added, “I think it makes sense that we hold all recommendations until we have a final product to deliver to the Governor’s office. If there are any Representatives or Senators in the room who find any (of our recommendations) to be appropriate to get to interim, I would encourage them to do so. As a commission, however, we should wait to deliver to the Governor until our complete report is ready.”
 - v. Representative Craig Frank added, “It might be wiser to address them all together. I go back to what Senator Jenkins said; there is a risk associated with that. If the Governor decides not to go forward, and if a legislator isn’t willing to go through our minutes and determine whether a recommendation is viable, it may not go anywhere.”
 - vi. Representative Chavez-Houck explained, “Representative Frank is offering the opportunity to have certain recommendations vetted by a committee, which may result in their blessing as it comes to a committee during the General Session.”
 - vii. Commissioner Bruce Hough stated, “My concern is that a piece-meal fashion may not be fair to the Governor. He should have the whole report to analyze. In light of the fact that he’s inherited this situation, I think we ought to give him our complete report.”
 - viii. Representative Craig Frank responded, “I was simply presenting this to the Commission as an option. We may want to get some recommendations through the interim committees.”
 - ix. **Motion by Commissioner Bruce Hough to “Hold all recommendations until we have a final product to deliver to the Governor’s office. If there are any Representatives or Senators in the room who find any to be appropriate to get to an interim committee, I would encourage them to do so. As a commission, we should wait to deliver to Governor until the complete report is ready; seconded by Commissioner Randy Dryer; motion approved 12-3.**
2. Commissioner Dan Jones thanked University of Utah students for their attendance. Commissioner Jones noted, “Of all the institutions we’ve been to, this is the largest group of students. I want to thank you for being here.”

4. Draft Recommendation – Elections & Lobbying Enforcement Commission (3:15-4:15 pm)

A. Presentation by Sponsor - Acting Chair Kirk Jowers

1. Acting Chair Kirk Jowers began the discussion by explaining, “In our second meeting at the Capitol, then Lieutenant Governor Herbert spoke to us about the need to change how his office deals with election-related complaints. This proposal attempts to address that concern. It does not address any type of ethics complaint. That’s not in our mandate. It deals with campaign finance, lobbying disclosures, and other related issues. This proposal was provided to the Commission quite some time ago. I’m happy to go through it. If anyone has questions or comments, please ask.”

a. Commissioner Ken Verdoia asked, “What is the fiscal impact of this independent commission?”

i. Acting Chair Kirk Jowers responded, “There would definitely be a fiscal impact. We would have three commissioners, with staff. Some staff could be replaced by those in the Lt. Governor’s office. Someone like Mark (Thomas) may end up being a commissioner.”

b. Commissioner LaVarr Webb stated, “I was not clear if the purview of the proposed commission was to deal with administrative issues or simply the enforcement of regulations. Is the proposed commission over all elections-related matters, or are there still some things separate from this independent commission?”

i. Acting Chair Jowers responded, “The Lt. Governor will still maintain complete control over election administration. If a candidate turned in his or her material, this commission would go through the process of reviewing those materials. As for complaints, it would handle everything from the simple to the complex. I have utilized Mark Thomas of Lt. Governor Bell’s office to be a resource. Right now, as I understand it, there are lobbying enforcement provisions which provides for an administrative law judge. As far as I know, that provision has never been used.”

1. Mark Thomas responded, “It was never used while Gary Herbert was Lt. Governor.”

ii. Commissioner LaVarr Webb asked, “So the Lt. Governor’s office continues to administer elections?”

1. Acting Chair Jowers responded affirmatively.

iii. Commissioner LaVarr Webb asked, “What about election complaints?”

1. Mark Thomas responded, “We would still receive those complaints but would then send them on to the Attorney General’s office.”

iv. Commissioner LaVarr Webb noted, “Then you (the Lt. Governor’s office) would be administering and enforcing campaign finance and lobbying. The proposed commission

would be in charge of receiving reports and seeing that they're turned in completely and accurately. It would oversee both administration and enforcement in campaign finance and lobbying rules, but not elections.”

1. Acting Chair Jowers responded, “Lobbying is not as obvious to put under the purview of the proposed commission, but the idea is to economize what this independent commission can do and bring it outside the Lt. Governor’s immediate review.
- v. Commissioner Webb asked, “Don’t some watchdog groups want to see elections completely taken out of the Lt. Governor’s office? I would agree that the Lt. Governor’s office needs more resources and more staff as opposed to turning over the Attorney General’s office. All these issues could be resolved within the Lt. Governor’s office if we gave them more staff and authority.”
- vi. Acting Chair Jowers noted, “22 states have independent commissions that handle these types of issues. We’re slightly in the majority by not having, but we’re unique by having everything in the Lt. Governor’s office and by not having a Secretary of State. I think you’ve (LaVarr) hit upon the first point of discussion – do we want independence or do we want to bolster the Lt. Governor’s office? That’s the first point of discussion.”
1. Commissioner Bruce Hough added, “I’d like to bifurcate this proposal to take the first section and deal with the rest separately. I don’t care what other states do; I care about doing what’s right for Utah. Setting up a new bureaucracy and a new budget seems to be out of scope of what’s necessary. It’s one of those solutions looking for a problem. Perhaps if we provide more funding for Lt. Governor’s office to get into details and field audits, I think that’s appropriate.”
 2. Senator Scott McCoy noted, “It seems like we’re mixing issues. I don’t see a huge problem with campaign finance enforcement, lobbying enforcement, or the offering of an inducement to be a candidate or to not be a candidate. If you think about the last election cycle, the independence of the Lt. Governor’s office was an issue. The problem is that this doesn’t address the real crux, which is the politicization of the election process. It’s true that you can solve some issues within the Lt. Governor’s office, but if you’re going to beg for money, let’s get some independence with it. Let’s

charge the proposed commission with campaign finance, lobbying, and elections issues. You get best of both worlds.

1. Acting Chair Jowers responded, “We’ll get into election issues more at our next meeting. This proposal simply is to get sense of where we stand. If we have all three, as you, (Senator McCoy) explained, that does take some worry out regarding politicization. It may also be hard to justify an independent commission just for elections. I think you’re right that it makes harder to justify if it’s just one of these three areas.
 2. Commissioner LaVarr Webb added, “I think these ought to be addressed together.”
 3. Representative Craig Frank asked Mark Thomas of the Lt. Governor’s office, “Mark, we heard from the Governor today. This proposal could restructure a good portion of the Lt. Governor’s office. Do we have a sense of how Lt. Governor Bell feels about this proposal?
 1. Mark Thomas responded, “The short answer is no, I don’t have too much of a feel. He is aware, but he really wants to look at it first.”
- c. Acting Chair Kirk Jowers stated, “What I would love is for someone else, a member of this Commission, to put forth his or her proposal on this matter.
- i. Commissioner Tom Love asked, “Don’t we have a consensus as a group that we want to all three covered? Now, we need to ask whether we want an independent commission or to keep within the Lt. Governor’s office.”
 1. Commissioner Hough noted, “I don’t think independent commissions exist unless you define independent as being separate from. I don’t think nonpartisanship is a reality in any form, including this one. Let’s be clear, independent means a separate entity, not a politically neutral entity.”
 1. Acting Chair Jowers responded, “Yes, the key is that it’s separate.”
 - ii. Commissioner Randy Dryer stated, “I wouldn’t abandon your (Acting Chair Jowers) concepts based on what you’ve heard thus far. My view is that if we’re going to have public confidence, I think independence is essential. On

the other hand, what Bruce says makes sense. I think we can blend two by having the Lt. Governor do some leg work to staff, but the ultimate decisions should be made by a three-person, bipartisan, and independent commission.”

- d. Acting Chair Jowers stated, “What I want to understand is if there is a general consensus and if we can task this to another Commissioner. Do we want to keep everything in the Lt. Governor’s office or do we want some kind of independent commission. Once we get a feeling, then we can go into specifics.”
 - i. Commissioner Bruce Hough stated, “That’s why I want to bifurcate this. Let’s first talk about what were dealing with, and then we can discuss the appropriate body to deal with it.”
 1. Acting Chair Jowers responded, “I think there’s a consensus that the Lt. Governor’s office needs more resources. Do we want to keep efforts in house, so to speak, or do we want independence?”
 2. Commissioner Randy Dryer stated, “My thought is to adopt Bruce’s (Commissioner Hough) general concept to keep efforts within the Lt. Governor’s office, empower them with resources, but ensure that the decision to prosecute, to dismiss or move to next step, be done not by the Lt. Governor’s office but by three independent commissioners. My question is whether or not Commissioner Hough would accept that as a friendly amendment.”
 1. Commissioner Bruce Hough responded, “I will not accept that as a friendly amendment.”
 3. Senator Scott McCoy added, “Independence is what it comes down to. You can achieve it in one of two ways – through separation or through insulation. What Randy is proposing is to add more staff and funding to have the nuts and bolts of administration handled in the Lt. Governor’s office. However, when a situation comes along that requires a decision; you have an insulated group that makes the decision, instead of the Lt. Governor picking winners and losers. You need an insulated body that is empowered to do exactly that.”
 1. Commissioner Bruce Hough commented, “That could give the Lt. Governor cover.”
 2. Senator Scott Jenkins commented, “Under this, election complaints could have

autonomy to move fast. That's a problem now – not being able to move fast enough.”

3. Commissioner Frank Pignanelli added, “What we propose is necessary. There were some events that happened last year that should not have happened. For example, those surrounding Mark Walker. In that example, the complaint was filed but the Lt. Governor didn't act. Because the Attorney General also didn't act, the county attorneys didn't act. In that case, how many lives were impacted because the decision to not make a decision was political? My concern is that we do something to make the process structurally sound so that people can have the benefit of an investigation in a short amount of time.”
4. Acting Chair Jowers stated, “We're phenomenal at talking. Let's have Bruce and Randy take ownership of this matter together. We seem to have a budding consensus. Let's have them work with David and Kara, the Commission attorneys. We'll revisit this proposal at our next meeting. Going back to Representative Frank's comments, the clock is ticking if we want to get our recommendations on the legislative calendar. My goal is to get everything voted on and included at our next meeting.”
 1. **Commissioner LaVarr Webb – Motion to table recommendation and delegate responsibility for independent commission proposal jointly to Commissioners Dryer and Hough. They should work together and with Commission attorneys to present new proposal at next meeting; seconded by Representative Rebecca Chavez-Houck; approved unanimously.**

Break (4:15-4:20 pm)

5. Draft Recommendation – “Revolving Door” Provision (4:20-4:55 pm)

A. Presentation by Sponsor – Commissioner Tom Love

1. Commissioner Tom Love thanked Commission Attorney David Hall for drafting the proposal. Commissioner Love introduced his proposal by stating, “I believe that this proposal closes a loophole, perhaps an unintended loophole, perhaps intentional. I believe that the public feels that the legislation the Legislature passed called for a flat one-year ban. I also believe that legislators thought they were voting for a flat one-year ban. The exceptions are tucked away after 7 pages. According to current law, a legislator cannot go to an existing firm, but he or she can start their own lobbying firm or go to a separate firm which happens to lobby. I applaud the Legislature for passing the initial ban; I just think it is easier and cleaner to pass a flat one-year ban. Former legislators should not be allowed to lobby their friends in the Legislature for one year. This would flatly prohibit all from lobbying for compensation for a one-year period. The intent is not to prevent an individual from making a living.”
 - a. Commissioner Randy Dryer asked, “If this is in place, would it inhibit former Representative Holdoway, for example, who has announced he is retiring from the Legislature to work for the UEA?”
 - I. Commissioner Love responded, he can take the job, he just can’t appear on Capitol Hill to lobby himself.”
 - b. Commissioner LaVarr Webb asked, “Would this prohibit an attorney who serves in the Legislature from going back to his same law firm?”
 - I. Commissioner Love responded, “He or she can work at the same firm, but they cannot go back up to hill and lobby personally for one year.”
 - c. Commissioner Bruce Hough asked, “Can you testify before the Legislature on behalf of your own company without being a lobbyist?”
 - I. Commissioner Love responded, “As long as what you’re doing does not require a license.”
2. Representative Craig Frank, upon passing out various-colored documents to the Commissioners explained, “The orange copy is the section of code that is addressed in the existing law itself. It shows the definition of who a lobbyist is and lays out requirements for licensing. As you can see, it’s clear as mud as to who must register. The yellow is something I saw in the *Salt Lake Tribune* relating to what was mentioned about Representative Holdoway’s situation. The white document is the bill we passed last year, itself. The last two sheets of that document are the votes from the House and Senate on the bill. You’ll notice that there were 13 dissenting votes in Senate. It passed in the House with 3 dissenting votes, one of which was mine. Before the bill was voted on, I refused to sign on as a cosponsor because I wasn’t comfortable with it. I had questions about whether or not we could prevent someone from making a living. I went to

one of the attorneys in Legislative Research and General Counsel. We spent some time discussing it. He concluded that there might be constitutional issues with telling someone what they can and can't do to make a living. We can put anything we want into statute; we won't know its constitutionality until someone challenges it. I'm still concerned about the constitutionality of telling someone that they can't lobby. My wife is a director of policy advocacy for a trade association. If Representative Holdoway is going to take the position with a trade association, does he have to register as a lobbyist? My concern is that it boils down to whether or not we have the right to do this constitutionally. I was the only one to vote against this, along with two Democrats.

- a. Commissioner Tom Love responded, "I appreciate your efforts and research into this, Representative Frank. The point is to not prevent anyone from making a living. It would not prevent Representative Holdoway from taking a job; it only prevents him from going back up to the hill to lobby his former colleagues. Its intent is to ensure that public officials can't immediately capitalize on public office.
 - b. Acting Chair Jowers added, "Thirty other states have a similar ban, and there have been challenges, but all have been upheld.
3. Commissioner Frank Pignanelli stated, "I hear so much about perception. The media come after politicians who receive substantial contributions, giving an indication that it's bad. However, if a candidate doesn't raise enough money, they are attacked by the media for being weak. If a candidate raises their own money, they're attacked for that, too. You just can't keep the media happy. It's all about perception. Are we trying to solve a problem that's being generated in the media?"
 4. Senator Scott Jenkins stated, "This loophole was not an oversight. We did this on purpose. It went around and around and this is where the support was. We spent a great deal of time talking about this. It's the American way to go work for yourself. That's why we left that out."
 - a. Senator Scott McCoy responded, "You can't go work for a firm that's set up to lobby but you can set up a firm for yourself?"
 - I. Senator Scott Jenkins responded, "The difference is that you have to take the money out of your own pocket to start your own business."
 1. Senator Scott McCoy responded, "It doesn't take money to lobby. You can do it from your living room."
 5. Commissioner Bruce Hough stated, "We need to be careful in preparing these resolutions that the "whereas clauses" are facts, not opinions. For example, I can't vote for this proposal in its current form because I believe the fourth "whereas clause" is an opinion, not a fact."
 - a. **Senator Scott McCoy – Substitute motion to pass resolution, deleting fourth paragraph; seconded by Commissioner Dee**

Rowland; objection by Commissioner Frank Pignanelli. Roll-call vote approved. Roll-call vote:

- I. Commissioner Dave Hansen – NO**
 - II. Commissioner LaVarr Webb – YES**
 - III. Commissioner Ken Verdoia – YES**
 - IV. Commissioner Dick Richards – YES**
 - V. Commissioner Frank Pignanelli – NO**
 - VI. Commissioner Tom Love – YES**
 - VII. Acting Chair Kirk Jowers – YES**
 - VIII. Representative Craig Frank – NO**
 - IX. Senator Scott Jenkins – NO**
 - X. Commissioner Dan Jones – YES**
 - XI. Commissioner Dee Rowland – YES**
 - XII. Senator Scott McCoy – YES**
 - XIII. Commissioner Randy Dryer – YES**
 - XIV. Representative Rebecca Chavez-Houck – YES**
 - XV. Commissioner Bruce Hough – NO**
- 1. APPROVED 10-5**

6. Public Comment

- 1. No public comment

7. Conclusion

- a. Next Meeting – Thursday, November 5, 2009 - 3:00-6:00pm
*Commission Deliberation and Voting on “Elections” and
“Lobbying” Recommendations, Utah State Capitol – exact location to be
announced.*