

Tennessee Ethics Commission
March 25, 2008
Minutes

The Tennessee Ethics Commission met on Tuesday, March 26, 2008, at 8:30 a.m. at the State Library and Archives. Commissioners Knight, Brown, Purser, Neal, and Garland were present. In the absence of Chairman Don Hall, Commissioner Neal served as Acting Chairperson and called the meeting to order at 8:30 a.m.

Minutes

After discussion, Commissioner Garland moved to approve the February 26, 2008 minutes. Commissioner Purser seconded the motion. After further discussion, Commissioner Garland withdrew his motion.

OLD BUSINESS

Draft Advisory Opinion 08-XX (Susan Ritter, Homebuilders Ass'n of TN)

Commissioner Knight moved for adoption of her alternate draft opinion. Commissioner Brown seconded the motion. After discussion, Commissioner Garland moved to approve the staff's revised draft of the opinion. Commissioner Brown seconded the motion. The motion passed 4-1, with Commissioner Knight voting no.

Advisory Opinion 07-03(Marylee Booth, TOMA)

This opinion was adopted by a vote of 3-1 on September 27, 2007, in the absence of Commissioners Garland and Brown. After discussion of the requirement that the Commission can act only by affirmative vote of four commissioners, Commissioner Brown moved to adopt the opinion. Commissioner Knight seconded the motion. The motion failed by a vote of 3 in favor, 2 opposed.

Draft Advisory Opinion 08-01(Gerry Boaz, Association of Government Accountants)

The staff draft received three votes at the February meeting and thus was not adopted. Commissioner Brown stated that he agreed with all sections of the draft except the answer to the second portion of question 9. Commissioner Neal placed the opinion on the agenda for the next meeting. Commissioner Garland suggested contacting the Legislative Study Committee on Ethics if a conclusion could not be reached. No vote was taken.

Proceedings on Complaints

Commissioner Purser moved to authorize General Counsel, before the complaint proceedings rules become effective, to make preliminary determinations on the facial sufficiency of confidential complaints and to forward facially sufficient complaints to the Attorney General. Commissioner Brown seconded the motion. The motion passed unanimously by a vote of 5-0.

NEW BUSINESS

Draft Advisory Opinions

(A) Southeastern Transportation Conference

Opinion requested by Len Oliver with the Tennessee Department of Transportation, on an interpretation of T.C.A. § 3-6-305-(b)(2),(b)(4) and (b)(7), concerning whether state officials

may attend a conference partially funded by employers of lobbyists, and accept free materials and promotional items provided by the employers of lobbyists in connection with the conference. Commissioner Brown moved for adoption of the staff draft and Commissioner Purser seconded the motion. Commissioner Knight discussed edits to wording and form. Commissioner Garland suggested that approval of the staff's draft should be subject to staff's consideration of Commissioner Knight's suggested edits regarding form, with the final determination to be made by General Counsel. Commissioner Brown stated he would accept a friendly amendment. Commissioner Purser seconded. Commissioner Neal asked staff to omit footnote 4 because it assumed a hypothetical based on facts not provided to the Commission, and staff agreed. The motion therefore omitted footnote 4. The motion passed unanimously by a vote of 5-0.

(B) American Heart Association

Opinion requested by Nathan James, the Tennessee Advocacy Director for the American Heart Association: an interpretation of T.C.A. § 3-6-305, concerning whether the Act prohibits an employer of a lobbyist from paying the expenses of a politically active stroke survivor who is also an official in the executive branch to travel to Washington, D.C., to participate in an annual "Lobby Day". After discussion, Commissioner Garland moved to adopt the staff's draft opinion, subject to consideration of Commissioner Knight's suggestions under the same terms as adopted for the Southeastern Transportation opinion. Commissioner Purser seconded the motion. Commissioner Knight offered an amendment as to format and Commissioner Garland accepted. The motion passed unanimously by a vote of 5-0.

(C) Doug Jackson

Opinion requested by Senator Doug Jackson and Representative Curry Todd: an interpretation of T.C.A. § 3-6-301 concerning the definition of lobbyist and employer of a lobbyist as applied to alleged activities of Seigenthaler Public Relations in connection with website stopteendrinkingttn.org. Commissioner Knight recused herself from discussion. Tom Lee, counsel representing Seigenthaler Public Relations, spoke on behalf of his client. Discussion followed with no vote taking place. Acting Chair Neal asked why two sections of the Tennessee Code Annotated, 3-6-301(7) and 3-6-303(a)(2), which both bore on the legislative intent of the issues raised in the Advisory Opinion, had been ignored. Acting Chair Neal read these into record. The issue was placed on the agenda of next months meeting.

(D) Robert Gowan

Opinion requested by Robert Gowan of Southern Strategy Group: an interpretation of T.C.A. § 3-6-301(15) and (17) concerning the definition of lobbyist as applied to advising clients on strategies for communicating with officials in the legislative or executive branch in order to affect legislative or administrative action. After discussion, Commissioner Purser moved to adopt the staff draft. Commissioner Garland seconded the motion. The motion failed on a vote of 2-3. Commissioners Garland and Purser voted aye; Commissioners Knight, Neal, and Brown voted no. Opinion was placed on the agenda for the next meeting.

Rules and Rulemaking (Administrative Sanctions)

Commissioner Garland moved to adopt the staff's draft rules on assessment of civil penalties, 0580-1-4, subject to staff consideration of Commissioner Knight's suggested edits on the same terms as adopted for the Southeastern Transportation opinion, and to proceed by publication rather than rulemaking hearing. Commissioner Purser seconded the motion. The motion passed with a vote of 4-1. Commissioners Brown, Neal, Garland, and Purser voted aye; Commissioner Knight voted no.

Status of Enforcement Proceedings

After discussion, Commissioner Purser moved to schedule informal Show Cause hearings on April 22, 2008 for employers of lobbyists who have failed to timely file disclosure of interest reports. Commissioner Knight seconded the motion. The motion passed unanimously on a vote of 5-0.

Executive Director's Report

Commissioner Purser moved to authorize Director Androphy to request the Legislative Finance Committee to approve a financial enhancement request to hire current intern Joshua Alexander as a full time staff employee. Commissioner Brown seconded the motion. The motion failed on a vote of 3-2. Commissioner Brown, Garland, and Purser voted aye; Commissioners Knight and Neal voted no.

Commissioner Purser moved to approve a press release regarding Show Cause hearings drafted by Director Androphy. Commissioner Garland seconded the motion. Commissioner Garland questioned the necessity of a vote to authorize Director Androphy to make the press release. There was no disagreement with Commissioner Garland's question and no vote was taken.

Adjournment.

There being no further business, Chairperson Neal adjourned the meeting at approximately 3:15 p.m.