

Senate Government Operations January 18, 1991 Page These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

January 18, 1991 Hearing Room "B" 3:00 p.m. Tapes 1 - 2

MEMBERS PRESENT: Sen. Glenn Otto, Chair Sen. Jane Cease, Vice-Chair
Sen. Jim Bunn Sen. Ron Grensky Sen. Tricia Smith Sen. Dick Springer

MEMBERS EXCUSED: Sen. John Kitzhaber

STAFF PRESENT: Gail Ryder, Senior Committee Administrator John
Houser, Committee Administrator Joan Green, Committee Assistant Jayne
Hamilton, Committee Assistant

MEASURES CONSIDERED: Informational

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TAPE 1, SIDE A

005 CHAIR OTTO: Called the meeting to order at 3:05 p.m. Introduces staff.

040 GAIL RYDER, SENIOR COMMITTEE ADMINISTRATOR: Reviews the committee rules,

Exhibit A. Two members are required for filing a Minority Report, there is a 48 hour requirement on the submission of amendments and the committee is allowed, by rule, to issue a subpoena.

051 MOTION: SEN. CEASE MOVED ADOPTION OF THE COMMITTEE RULES, AS PRESENTED. HEARING NO OBJECTION, SO ORDERED.

056 OTTO: Refers to letter dated January 17, 1991, Exhibit B, that was circulated to members. Requests the directives be observed by the members of the committee and the Ethics Commission.

070 RYDER: Discusses committee procedures. Staff will work for both Government Operations and Redistricting Committees. Legislative Administration Committee (LAC) has requested members be encouraged to bring their own bill folders to committee to reduce paper usage, if for some reason that cannot be done staff will provide them.

082 CEASE: All handouts will be provided in committee?

083 RYDER: Correct. Explains use of the routing slip for excused members' materials or material forgotten in committee. Requests members notify staff if they must be excused from a meeting. Election issues will be referred to Senate Redistricting.

(Tape 1, SIDE A)

INFORMATIONAL MEETING

Witnesses: Patrick Hearn, Executive Director, Oregon Government Ethics Commission

125 PATRICK HEARN, EXECUTIVE DIRECTOR, OREGON GOVERNMENT ETHICS COMMISSION: Discusses history and background of the Oregon Government Ethics Commission (OGEC) legislative proposals, HB 2167 through HB 2174, all of which were drafted prior to my assuming this position.

158 CEASE: Is there a listing of those bills?

164 HEARN: No. Continues with discussion of OGEC's proposals, beginning with HB 2168, which would modify ORS 244.040 to provide that "No person shall represent a client for a fee before an agency over which the person has regulatory or legislative authority. This subsection would not apply to this person's employer, business partner or other associate."

183 SMITH: Could you give us an example of how this could occur?

189 HEARN: I am not aware of a situation where this did occur. It is my understanding that the OGEC hoped to more clearly delineate the parameters for public officials, in relationship to their public office and other employment activities.

196 SMITH: It would seem that is a clear conflict of interest. If a county commissioner is also a land use consultant, he could not represent a client before the county commission, on which he sits. Is that what this addresses?

202 HEARN: Possibly. Continues with discussion of OGEC's proposals, beginning with HB 2169 relating to candidates for public office.

222 OTTO: The candidate must file a statement of economic interest?

224 HEARN: Correct, currently that is the statute, this proposal would exempt some candidates for local office from that requirement.

226 SMITH: Only for certain city and county positions?

229 HEARN: Yes.

231 CEASE: Is that a fiscal measure?

231 HEARN: It would provide operational consistency with the reporting requirements of the elections division.

236 CEASE: Where do city and county people file?

239 OTTO: With the county clerk.

240 CEASE: It would still be subject to those other election filings?

241 HEARN: Those would not be affected. This would affect those required to file with the OGEC.

243 CEASE: Then there would be an inconsistency.

248 HEARN: I understand that would eliminate a current inconsistency. Continues with discussion of OGEC's proposals, beginning with HB 2170 relating to statements of economic interest. Discusses HB 2172 which would cross-reference ORS 244.060 and require the business related travel to be reported, as such, in the statement of economic interest.

315 CEASE: Would my "other life" job travel need to be reported?

321 HEARN: This would not speak to that.

323 CEASE: It is only the public money or the travel?

324 HEARN: Travel taken only as a public official. Continues with

discussion of OGEC's proposals, beginning with HB 2173 relating to the crime of unlawful legislative lobbying. HB 2174 would modify ORS 244.045 by adding the State Treasurer to the listing.

385 OTTO: These bills were developed before you came on board?

386 HEARN: Yes.

387 OTTO: Are they presently assigned to a committee?

389 RYDER: Legislative Rules and Reapportionment.

392 OTTO: Requests copies of the bills be obtained for members.

406 HEARN: Discusses written testimony, Exhibit C.

468 SMITH: Were you on board when the positions were developed?

474 HEARN: They were finalized subsequent to my assuming the position.

481 SMITH: Referring to SB 290, there is nothing in the statutes to preclude the Executive Director from being reappointed?

490 HEARN: Correct.

491 SMITH: How would that deprive the Commission of expertise?

493 HEARN: It would be subject to the confirmation of the Senate.

TAPE 2, SIDE A

035 HEARN: Continues discussion of written testimony, pg. 2, SB 291, Exhibit C.

050 SPRINGER: Would violation of ethics laws subject an individual to possible criminal prosecution for official misconduct?

055 HEARN: I believe that is possible.

056 SPRINGER: I am trying to suggest parallels to the criminal justice system. How would you distinguish what you do, as far as confidentiality before a decision is made, to file an accusatory instrument or a complaint?

065 HEARN: The OGEC is the recipient of the filing instrument, it is initiated by a citizen.

072 SPRINGER: I would think a citizen could make an allegation, not a complaint.

088 HEARN: Continues discussion of written testimony, pg. 2, SB 291, Exhibit C.

098 OTTO: Those are being proposed as administrative rules?

099 HEARN: Yes.

100 OTTO: It seems we heard that in testimony last interim, and I would have hoped they would have already been adopted.

102 HEARN: We intend to pursue that immediately.

106 SMITH: Has the OGEC received an opinion from the Attorney General (AG) or decided on their own that there is statutory authority, currently within the law, to allow administrative rules to be made?

111 HEARN: In an informal inquiry of our contact counsel I have been told counsel believes the authority currently exists. Continues with written testimony, pg. 2, SB 292, Exhibit C.

149 OTTO: The preliminary would be 90 days and then an additional 270 days?

150 HEARN: No Senator, it would be 180 days for a total of 270 days.

155 GRENSKY: Requests an explanation for OGEC's objection to pg. 2, A, SB 292 , Exhibit C.

164 HEARN: There are a number of reasons for anonymity, often information comes from employees or family of employees.

181 GRENSKY: I am concerned that an anonymous allegation could be made and reach the media, with damage being done, before the allegation is determined to be without merit. Is that possible?

189 HEARN: Yes.

190 GRENSKY: A balance needs to be struck, do you really want to oppose this? If people want to come forward, they need to do so.

209 OTTO: Concurs, but we will debate that next week.

216 CEASE: Who would this apply to?

222 HEARN: Any statewide elected official, any appointed public official, city managers, elected members of rural fire protection, district boards of education, water districts, a myriad of officials.

228 CEASE: Points made in favor of anonymity are valid.

262 SMITH: Mr. Hearn says the OGEC does not currently act on unsigned complaints. How does the change in statute affect anonymity?

268 HEARN: The OGEC feels the formalization of the process would discourage people from coming forward.

271 SMITH: If they knew they could face criminal charges if they are lying they might not want to make a complaint?

275 HEARN: The OGEC feels the formalization of going before a notary would be a discouragement, not a fear of the perjury provision.

283 CEASE: This change would not allow for the reporting of an employer who is stealing.

287 SMITH: What in this change jeopardizes the anonymity of the person alleging the violation?

290 CEASE: A sworn statement for the record.

319 HEARN: Continues with written testimony pg. 3, SB 292, D, Exhibit C.

401 GRENSKY: Why five years instead of four years?

404 HEARN: The consensus of the Commissioners was four years is not a long enough period.

407 GRENSKY: Could you prove a case with five years or would the trail get cold?

416 HEARN: I don't know.

420 GRENSKY: Will the Commissioners appear before the committee?

427 HEARN: Yes, Derek Johnson the Vice Chair will appear before the committee. Continues with written testimony pg. 5, SB 294, Exhibit C.

449 GRENSKY: With a four or five year statute of limitations what is the harm of having the 21 day period, as an attempt to remove the Commission as a tool for manipulation by opponents?

453 HEARN: I don't believe the Commission opposes the concept. There is no way to enforce it and keep the information from the media.

458 GRENSKY: Isn't there a distinction between saying "I have filed a formal complaint with the Ethics Commission" before an election, as opposed to running to the media with an allegation?

488 HEARN: The commission perceives someone going to the press with a draft of the complaint and the statement that they are going to release it the day after election. We believe that would carry weight in the media.

TAPE 1, SIDE B

031 BUNN: Would that have as much weight with the media as the media calling the OGEC, and the Director saying "yes we have received this complaint and we will be investigating it."?

035 HEARN: I don't know. Continues with written testimony pg. 5, SB 295, Exhibit C.

047 OTTO: I have had similar thoughts, rather than specifying who should do the work we could reflect that request.

058 HEARN: Continues with written testimony pg. 6, SB 296, Exhibit C.

067 GRENSKY: Does the commission have a position on the payment of reciprocal attorney fees or attorney fees to the prevailing party?

071 HEARN: Yes, we will discuss that in a separate bill. Continues with written testimony pg. 6, SB 297, Exhibit C.

104 BUNN: If you do not use the probable cause definition parallel to that in criminal law, what would you use for a definition of probable cause?

108 HEARN: It relates to the substantial evidence standard, as currently used.

109 BUNN: Has the OGEC discussed and/or developed a suggested alternative definition?

110 HEARN: Not to my knowledge.

111 BUNN: It would be helpful if the OGEC would present an acceptable alternative at the hearing on Monday.

125 HEARN: Continues with written testimony pg. 7, SB 297, D, Exhibit C.

146 GRENSKY: Could you explain the distinction?

158 HEARN: We are suggesting the fees be awarded to whichever party prevails, be it the OGEC or the respondent.

162 GRENSKY: In a civil action the party usually has some choice in being involved. In these situations the party has no choice, they are brought into it. If they lose they should not need to pay the OGEC attorney fees, there is a distinction.

168 SPRINGER: I recall a similar concept in a bill last session. This is paralleled to the Federal Ethics and Government Law. That may be one end of the spectrum and current situation the other. Perhaps a balance can be struck.

190 RYDER: Refers to three Issue Briefs prepared during the interim, Exhibit E, Exhibit F and Exhibit G, as well as the Senate Committee on Government Operations legislative packet, Exhibit D.

Meeting adjourned at 4:15 p.m.

Submitted By:

Joan Green
Assistant

Reviewed By:

Jayne Hamilton
Assistant

EXHIBIT LOG

A - Committee rules, Staff, 3 pgs. B - Memorandum, Sen. Otto, 1 pg. C -
Written testimony, Hearn, 7 pgs. D - Committee legislative package for
OGEC, Staff, 3 pgs. E - Issue brief on structure, Staff, 2 pgs. F -
Issue brief on procedures, Staff, 5 pgs. G - Issue brief on judgements
and opinions, Staff, 6 pgs.