

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON ELECTIONS, PROCEDURES, ETHICS, AND
CONSTITUTIONAL AMENDMENTS**

**Seventy-Fourth Session
February 27, 2007**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Ellen Koivisto at 3:49 p.m., on Tuesday, February 27, 2007, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Ellen Koivisto, Chair
Assemblyman Harry Mortenson, Vice Chair
Assemblyman Chad Christensen
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Heidi S. Gansert
Assemblyman Ed Goedhart
Assemblyman Ruben Kihuen
Assemblywoman Marilyn Kirkpatrick
Assemblyman Harvey J. Munford
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom
Assemblyman James Settlemeyer

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Terry Horgan, Committee Secretary
Trisha Moore, Committee Assistant



OTHERS PRESENT:

Lynn Hettrick, Private Citizen, Gardnerville, Nevada
Craig Walton, President, Nevada Center for Public Ethics
L. Patrick Hearn, Executive Director, Nevada Commission on Ethics

Chair Koivisto:

[Roll called] Our first bill this afternoon is Assembly Bill 109.

Assembly Bill 109: Revises provisions governing the disposition of unspent campaign contributions. (BDR 24-87)

Assemblyman James Settelmeyer, Assembly District No. 39:

This bill came about because the gentleman who held this Assembly Seat before me wanted to leave his leftover campaign funds to the Boys and Girls Club of Douglas County. Unfortunately, the Boys and Girls Club of Douglas County does not yet exist, so a trust fund must be established for that purpose. However, within current law, one cannot set up a trust fund, one can only give the money to the charitable institution.

We want the ability to create this trust fund within the State Treasurer's Office so a responsible individual would be overseeing it. I looked at other states' election laws to see what could be done with surplus campaign funds. A common theme among the states allows the money to be used for community activities or activities considered beneficial for society.

There is no fiscal note; however, if too many people decided to take advantage of this, additional staff might be needed. In most situations there would be a charitable entity one could donate to, so this need would be very rare. Also, most politicians donate unspent campaign funds to other campaigns or to their party for future elections.

Lynn Hettrick, Private Citizen, Gardnerville, Nevada:

I wanted to establish a trust for the Boys and Girls Club, but the law currently does not allow an individual to take unspent campaign contributions and put them into a trust. There is a list of entities that one can return unspent money to at the bottom of page 2 of the bill including nonprofit entities, but not trusts.

The intent is to establish a trust and invest the money. Annually, the Treasurer would calculate the interest earned by the trust and disburse 90 percent of that revenue to the Boys and Girls Club. Ten percent of the annual revenue would have to go back into the trust to make the trust grow. The intent is that this

would go on for a long time and continue to grow so the money the Boys and Girls Club would receive would increase every year. It would essentially be a trust in perpetuity for the benefit of the Boys and Girls Club.

Language at the top of page 3 of the bill would establish a trust to dispose of the money for the exclusive benefit of a public purpose and direct that the trust must be administered by the State Treasurer. The reason the State Treasurer was chosen was that the State Treasurer already administers money for public purposes and already does the investing and accounting. In addition to that, because of the size of the fund that the State Treasurer invests, the cost of investing is very, very low. With a lowered burden more income would be created, and the fund would grow faster to benefit the Boys and Girls Club even more. Further down the page at the bottom, it tells you that the State Treasurer would administer the trust, do all the things normally done by a trustee for a trust, and disburse the money.

Chair Koivisto:

Is this trust specifically for a Boys and Girls Club?

Lynn Hettrick:

Yes.

Chair Koivisto:

If another person had campaign funds they wanted to contribute to some other organization, would they have to create another trust? Am I reading this correctly?

Lynn Hettrick:

I believe you are reading it correctly. When I asked that this bill be drafted, we did not request the verbiage at the top of page 3 that says, "which must be administered by the State Treasurer." We only wanted to permit administration by the State Treasurer. In Section 2 at the bottom of page 3, we wanted to allow the Treasurer to administer the trust. It does not bother me that it says, "must be" if someone wants to go and do a trust. If you have a charity that already exists or a Boys and Girls Club that already exists, you could go to that charity, donate the money, and specify to them that they had to establish a trust. You would not have to go to the State Treasurer, so it does not bother me that this language is in here. I think you can work around it. My problem is that the Boys and Girls Club does not exist, so I cannot go to them and tell them to establish a trust. That is why I wanted the State Treasurer to administer the trust. If the language at the top of page 3 was changed to say,

"which may be administered by the State Treasurer," that would be perfectly fine.

Assemblyman Conklin:

We have an organization in southern Nevada called the Nevada Community Foundation, which is a trust company that smaller organizations can put money into. The money is lumped into a big trust fund that earns good interest. Money is disbursed from the Community fund to the organizations designated by the original donors. Private donors use it and nonprofits use it.

Could this be amended so that if someone wanted to put their unspent campaign funds into the Community Foundation for future designation to nonprofits, they could? That entity already exists and there would not be a fiscal note.

Lynn Hettrick:

I would be happy to see that added to the language of this bill. The intent is simply to allow someone with unspent contributions to establish a trust for the benefit of a public purpose, a charitable entity. The entity through which that money goes is not crucial. The idea of going through the Treasurer's Office was because of the low cost, which would maximize the benefit.

Chair Koivisto:

When I first read this, I thought of the Fund for a Healthy Nevada where groups apply for grants. Do you see this working that way?

Lynn Hettrick:

No. The way the Boys and Girls Club works, before they can actually open the club they must demonstrate that they have the money to cover the operating expenses for one year. I did not want them to take the money and use it the first year as operating capital and then not be able to continue. I am hopeful that establishing the trust will encourage other people to donate to it or create their own trust to help the Boys and Girls Club. This could ultimately generate enough ongoing revenue that they would have their annual operating expenses paid by an endowment of this type.

There is no provision in the trust I am working on for anyone to apply for grants or anything like that. The only secondary provision is that should the Boys and Girls Club cease to exist, the trustees would give the income to benefit some other charitable organization.

Chair Koivisto:

If that were to happen, what is the mechanism for another organization to apply for those funds?

Lynn Hettrick:

Should the Boys and Girls Club cease to exist, the money must be given to another charitable organization in Douglas County, Nevada.

Assemblyman Settlemeyer:

It comes down to how the trust is set up under each individual set of circumstances. Nothing in the *Nevada Revised Statutes* would set that forth. It would be wise to allow the individual who set up the trust to make sure the money goes to a charitable organization or worthwhile public endeavor.

Assemblyman Segerblom:

Do you have the trust written?

Lynn Hettrick:

The trust is being drafted now.

Assemblyman Segerblom:

When do you have to give away your funds?

Lynn Hettrick:

I had to deposit the funds by January 15, 2007. I deposited them with a nonprofit entity that has agreed to pass them on to the trust should we pass this law.

Assemblyman Segerblom:

So this legislation is more for the future and the next time someone has to do this?

Lynn Hettrick:

We may ultimately transfer this money into the State Treasurer's Office. Yes, it is trying to do something that would work in the future.

Assemblyman Segerblom:

Does the State Treasurer currently administer trusts?

Lynn Hettrick:

No. That is why you will see new language at Section 2 on the bottom of page 3 that adds a new section reading, "shall administer a trust established pursuant

to" the section above. That is where it establishes their ability to administer a trust. They cannot do that now. I do want to compliment the State Treasurer's Office. They were very kind to review this bill. Obviously, they had concerns because they did not want to see this become a giant entity with multiple trusts. They looked at it and were very reasonable, noting that it had not happened in the past and was not likely to happen very often in the future. It will be a simple accounting thing and either once a quarter or, more likely, once a year they will calculate the earnings and request a check. They gave us a fiscal note of zero.

Assemblywoman Gansert:

The Community Foundation of Western Nevada is set up in Reno. It does what you are talking about, but I do not know what the expenses are. They may even help you create it.

Lynn Hettrick:

The organization I gave the money to in Douglas County is the Partnership of Community Resources, which works much the same. The problem is that they channel all the funds and see that the various organizations get them, but they do not actually administer or invest the funds. I gave them the money with the understanding that they would then give it to the trust.

Chair Koivisto:

This would be the framework so anyone could contribute unused campaign funds to set up a trust, whether for the Boys and Girls Club or some other use.

Lynn Hettrick:

You are exactly correct. It allows the establishment of a trust for a public purpose. If you are going to amend this bill, I would not hesitate to have you add the phrase "nonpolitical public purpose." That way, people do not think you are trying to establish a trust for the benefit of some political party. I would also strike the word "must" and say "may" so the State Treasurer does not feel as though anyone who ever wanted to establish a trust with political funds was going to put those funds through the State Treasurer's Office.

Other than that, all the bill does is say you may establish a trust and if you do, the State Treasurer would administer it.

Assemblyman Mortenson:

Will this trust only be for contributions or does the bill allow some philanthropist who is about to die to put money into it?

Lynn Hettrick:

This allows the elected person with leftover political contributions they must dispose of to establish the trust. It does not prohibit a philanthropist from donating money to that trust.

Assemblywoman Kirkpatrick:

Because the State will be administering the trust, would Section 2, subsection 1(e) make the public purchasing department abide by all those rules? Currently, any State agency does have to send things out for bid. Could you clarify that?

Lynn Hettrick:

I did not specify this with bill drafting. I believe it was put in by drafting to allow for the fact that when the State Treasurer's Office invests money with some of the major investment firms across the country, they pay a fee for that service for management of the fund. That was what Legal was trying to put into this section—that they may contract with a vendor for any good or service. They already do that, it is already negotiated, and they do not have to do that through Purchasing. They do that as an investment account with the investment companies they are dealing with now.

Assemblyman Settlemeyer:

The other reason may be because the State of Nevada does contract with vendors to issue checks and they would be forbidden from allowing their contractor to send out the checks. I am guessing Legal may have included that language for that purpose.

Assemblywoman Kirkpatrick:

I understand what you are saying, but I believe this is the exact same language they use for public purchasing whether it is toilet paper they are buying or checks they are writing. I would want to ask Legal to verify that it does not put you in an entirely different set of contracts with the trust you are trying to get the money to.

Lynn Hettrick:

This is a good point and one we should verify to be certain the language does not tie us up. That was not my intent, and it may not have been Legal's. Possibly, that language just got picked up. I would be happy to check that and Mr. Settlemeyer will get back to the Committee Members with that clarification.

Chair Koivisto:

We will get clarification from Legal on that and bring this back for a work session.

Craig Walton, President, Nevada Center for Public Ethics:

We speak in support of A.B. 109. Is the State Treasurer deciding what counts as a "public purpose" and would there be any way that decision could be checked? In the best case, the purpose chosen would be seen as nonpartisan and beneficial to Nevadans. In the worst case, it could be seen as partisan or narrowly targeted in a way that seems to leave out, or ignore, equally or more worthy purposes. How is this choice to be vetted? Could there be a nonpartisan or bipartisan board to vet the proposals for the receipt of these monies? Some oversight and checking process is needed, or is there another statute that would govern the State Treasurer's choices about which purpose to fund?

Assemblyman Settlemeyer:

I discussed those concerns with Mr. Hettrick and we can make sure it was not for political purpose or if it was the discretion or desire of the board, we could also indicate that the checks could only go to a 501(c)(3) charity. One of the dangers I see after assessing other states' handling of these funds is the "worthy" purposes their laws currently allow. They allow funds to be given to volunteer fire departments, most of which are not 501(c)(3) entities. In some states, funds may go to "scientific, education, youth, recreation, literacy groups" and many other worthy groups that I consider to be public purposes. I agree with Mr. Hettrick's decision to amend A.B. 109 and add that the funds cannot be used for anything deemed to be a political purpose. I feel we can trust the Treasurer's Office to do what is correct, but if they violate ethics, we, theoretically, will be passing out of this Committee a bill that would have repercussions if they chose to disobey.

I personally would not like to see a board set up. That would be adding additional expenses onto a worthy goal. Paying board members and adding such a burden to the State would just kill the whole thing.

Craig Walton:

That helps to clarify. Perhaps there is another place in the statutes where the phrase "public purpose" is defined, or perhaps the legislative history of this bill, this hearing, and this discussion, will serve to clarify what we mean. As I understand the meaning of the draft, it would say that there will be one trust, the one set up in the Treasurer's Office. Is that correct?

Assemblyman Settlemeyer:

For this particular situation, Mr. Hettrick would be setting up the trust with the Treasurer. If it was the discretion of this Body to allow individuals to have private trusts set up for the purpose of sending money to a political purpose, it would be different. It would not be one trust. The State Treasurer's Office actually felt the chances of this occurring would be fairly rare. However, if the next person leaving office wished to do this, they could also donate to Mr. Hettrick's goal; however, the reality is that I am not sure someone from Clark County would want to donate to Douglas County. There would be the possibility for multiple trusts.

Craig Walton:

As I understand now, there is no decision to be made by the Treasurer as to where the money goes, but rather it is the donor who stipulates a purpose for which the trust shall serve. The Treasurer sets up the trust and administers it. Every county could potentially have one, is that correct?

Assemblyman Settlemeyer:

That possibility would exist and it would be at the discretion of whoever set up the trust as to how the funds would come out of the trust and be disbursed to those worthwhile organizations or groups.

Chair Koivisto:

Again, for clarification, my understanding of this bill is that it creates the mechanism to set up a trust and does not specify a particular trust.

Assemblyman Settlemeyer:

Correct.

Chair Koivisto:

We will close the hearing on A.B. 109 and open the hearing on A. B. 143.

**Assembly Bill 143: Revises provisions relating to the Commission on Ethics.
(BDR 23-855)**

Assemblyman Ed Goedhart, Assembly District No. 36:

The intent of A.B. 143 would be to adjust the amount of time the panel has to do the initial review on an ethics complaint and also seeks to enable the person making the complaint to get more information with which to track the system. Copies of five letters have been distributed to you ([Exhibit C](#)). Those letters express the concerns from citizens who have taken the time to file complaints. Some of the people against whom the complaints were filed were in public

office at the time. Those letters are feedback from people attempting to use the system.

While campaigning I heard concerns about the Ethics Commission. I was told that ethics complaints were being lodged by citizens, but that the Ethics Commission was not doing anything about investigating those complaints. When a member of the public reports a possible ethics violation to the Ethics Commission, the Commission decides if it has jurisdiction. If the Commission decides it has jurisdiction, the complaining member of the public receives a letter telling them the Commission has jurisdiction and is investigating the complaint. Then the Commission has no further communication with that member of the public regarding their complaint. Until pre-hearing, everything is confidential; the Commission will neither confirm nor deny the investigation. When I started checking into the citizen concerns, I found that the Commission operates under a veil of secrecy and that the ethics statutes require that investigations and pre-hearings be completed within 45 days, but give no guidelines as to what happens after the 45-day deadline has expired. This did not seem to be a problem until about two years ago. Nye County Commissioner Candice Trummell, under an ethics investigation that spanned more than six months, simply waited until the pre-hearing, when she invoked the 45-day deadline to have the complaint dropped. Because she waited until the pre-hearing, what happened with her complaint is a matter of public record.

After this incident, at least three more complaints were dropped by using the 45-day deadline to duck investigations. They simply waited until the 45 days had passed and wrote a letter to the Ethics Commission invoking the 45-day deadline prior to pre-hearing. Because everything is confidential prior to the pre-hearing, the complaints just disappear, giving the public the impression that nothing is ever done.

This practice cuts both ways. Because the Commission will neither confirm nor deny a complaint has been filed, allegations of ethics complaints have been used in campaigns and the person being accused of having ethics complaints filed against them has no way of proving there are not any pending complaints.

One of my campaign staff is a political science graduate student. She tried to gather statistics regarding the Ethics Commission; however, because of the veil of secrecy and the lack of public information from the Commission, she was only able to find the barest of information. When the Ethics Commission was first formed, they fielded about 20 complaints a year, so 45 days was probably plenty of time. However, as time has passed, more and more members of the public have become aware that they have some recourse to their elected

officials' behavior. The Ethics Commission fields more than 80 complaints a year now. The 45-day statute of limitations is simply too short an amount of time when the Commission has very limited staff.

The other issue I heard most often regarding the Ethics Commission is their silence. I heard this from both members of the public and other elected officials. This, I believe, could be easily remedied by lifting the veil of secrecy. If the public can at least track the status of their own complaints, then they will feel assured that they are being taken seriously. The State's business of protecting the public from corrupt politicians should not be conducted under a veil of secrecy. This proposed legislation is a step toward regaining the public's confidence. It will allow the complaining member of the public to receive updates regarding what is being done, and will allow the Commission the time it needs to complete its job.

Assemblyman Mortenson:

Let us say an election is taking place and one candidate, "Joe", is an unethical campaigner, but "Sam" is a good one. "Joe" files a complaint against "Sam" and now, with the veil of secrecy lifted, it is made public. As a result, during the course of the campaign there is a shadow over "Sam" because he is being investigated by the Ethics Commission, when it may be totally unfounded.

Assemblyman Goedhart:

Until the pre-hearing, everything is confidential. When talking about lifting the veil of secrecy, we are still going to protect previous matters of confidentiality. This language is more or less allowing the individual to track the system and make certain their complaint is actually being investigated.

One of the letters I supplied to the Committee was written by Ron Johnson and in the second-to-the-last paragraph of his letter it says,

Finally after waiting months for an ethics investigation report, having even contacted the Ethics Commission and Town Attorney, I was made aware that the Ethics Commission had in fact dismissed my complaint. It was not dismissed for lack of evidence, but it had been "summarily dismissed." I had not been notified of this fact, nor have I currently had any feedback in this complaint or its dismissal.

Here is a person who felt strongly enough to take the time and file a complaint and did not even know the complaint had been summarily dismissed. Sometimes we speak about the veil of secrecy, but it is more how is the

complaint working itself through the system? Is it on track to make the current 45-day deadline? If it will be sent to a hearing, maybe the individual should be told it will take an additional length of time to conduct the investigation.

Even as the law currently stands, it is still possible for an unethical politician to file a complaint against an opponent in a political race. There is nothing in the current statute that precludes that.

Assemblyman Mortenson:

When you file a complaint now, the Ethics Commission does not report back to you saying whether or not they have decided to proceed with that complaint. Is that correct?

Assemblyman Goedhart:

We provided you with testimony from people who have filed complaints with the Ethics Commission and what they see as a problem is that they file a complaint and it goes into a "black hole." They do not know if their complaint is being pursued nor do they know if it is being investigated. After 45 days, if they have not heard anything, they do not know if time ran out or if a regular hearing is being scheduled. There is no feedback to the citizenry. This is causing a breakdown in the citizen's perception of the effectiveness of the Commission as it is currently set up.

Assemblyman Mortenson:

My point is that the instant the Ethics Commission communicates to you, you know your complaint has not gone into a "black hole." At that time, if you are unethical, you can use that and say, "I have this message from the Ethics Commission regarding 'Joe Schmo' who is running for election."

Assemblyman Goedhart:

If that was the worst thing that happened to me in my election, I would have considered that to be a very clean race. There is a lot of mud that gets slung in certain elections, with or without ethics allegations.

Assemblyman Mortenson:

Ethics allegations are strong and they may be stronger when one can say one has a letter from the Ethics Commission regarding such and such. It adds credibility during an election, I believe.

Assemblywoman Kirkpatrick:

I am concerned that one year is too long. If the one-year timeframe were approved, what would happen if the person was unelected? Would the case automatically be dismissed?

Assemblyman Goedhart:

I have heard from quite a few people that one year does seem to be too long and might allow the proceedings to drag out too far into the future. I have heard dates of from 90 days to 6 months and am open to the Committee's suggestions in that area. From what has happened in District 36, it appears 45 days may not give the Ethics Commission enough time.

L. Patrick Hearn, Executive Director, Nevada Commission on Ethics:

The process that has been spoken of here is difficult for me to reply to because I have no personal knowledge of the cases referenced in the letters Mr. Goedhart introduced ([Exhibit C](#)). I can only tell you what the process is now.

When a complaint is received by our office it is transmitted to me to make a determination of jurisdiction, whether I believe we do have jurisdiction or we do not. I send that determination to our general counsel who reviews it and either concurs with me or does not concur with me. If she does not concur with me then we have to work it out to achieve some consensus on the matter. Ninety-nine percent of the time we concur.

If there is no jurisdiction we send a letter to the complainant telling them it is not jurisdictional. That happens a lot because people can confuse or associate things they consider to be unethical conduct with ethics law. Not everything that is unethical is illegal. We have a fairly high number of non-jurisdictional complaints. When that happens, we explain they are not jurisdictional. It can be because the person is neither a public officer nor public employee, or because there is no allegation in Nevada's Ethics in Government Laws that has been made. If they are complaining about someone such as an officer of the court, we will refer them to the Commission on Judicial Discipline. If it is a complaint against an attorney, we will refer them to the Nevada State Bar.

If we determine there is jurisdiction we send the person a letter. We tell the requester that their complaint has been received, that it is being investigated, and that until the panel determination is made all matters in the agency's file are confidential, but that after the panel determination is made, those things may become subject to public review or public inspection.

The panel determination is a review of the Executive Director's report and recommendations by two members of the Commission. The determination they make is whether or not there is just and sufficient cause to conduct a hearing and render an opinion in the matter. Regardless of the outcome of that panel determination, that is whether the panel finds there is not just and sufficient cause and dismisses it, or they find there is just and sufficient cause and a hearing is set, all matters in the file at that time are subject to public review or public inspection.

Ethics commissions everywhere are used extensively as political baseball bats. It would be fair to say there are caseload spikes during election years. The motivation or ill will that may be the basis for someone filing a complaint does not necessarily mitigate or negate the fact that a violation may have occurred. It is a fine line to walk and the provisions in statute and in our administrative regulations relating to confidentiality are to offer and afford some protection to the public officer or employee who is the subject of the complaint.

Chair Koivisto:

With the volume of complaints you currently have, is 45 days enough time for you to make your determination, in consultation with your legal counsel, and to proceed so that the things Mr. Goedhart is addressing in A.B. 143 are resolved? If 45 days is not enough time and people are able to wriggle out from under things because of "timing-out," so to speak, could you address that?

Patrick Hearn:

No, 45 days is not enough time, and in fact, it is really less than that because in order for our staff to complete its work, the subject public officer or public employee must provide a response to us within 10 days after we have notified them the complaint has been received. That is not enough time for them to prepare a response, gather supporting materials for their response, or even to retain legal counsel, if they choose to do so.

Under the current process, 99.9 percent of the time the public officer voluntarily waives that 45-day timeframe, which enables them to take longer to provide materials to us and for us to do a more thorough job in evaluating those materials and making our determination.

Assemblyman Segerblom:

With respect to the process you just described, where you say you respond to the complainant with a letter informing them what the status is, is this in regulation? Is your process laid out in black and white somewhere so we can see it?

Patrick Hearn:

Not to my knowledge. I am not aware that the process of notification is in statute. It might be in regulation, but I do not believe it is.

Assemblyman Segerblom:

Internally, do you have a process that is public record so we could verify what Mr. Goedhart is saying?

Patrick Hearn:

Not that I am aware of, but we could certainly prepare one.

Assemblyman Segerblom:

That would be helpful. We could then say, "Here is what your process is" and if it does not happen that way we can say, "What happened?"

Speaking about the 45-day rule and cases being dismissed, you are saying that less than 0.1 percent of cases are dismissed because they were not completed in a timely fashion?

Patrick Hearn:

I am aware of some of the cases, having heard about them from staff and Commission members in the short time I have been with the agency. I believe there was a period of time during which several cases almost simultaneously did run out of time. In the seven months I have been with the agency, no cases have run out of time and been dismissed for that reason.

In response to a prior question, we do have an internal controls manual that lays out in pretty good detail most of our procedures and I would be happy to provide it. I think we could probably find the answers you are looking for there.

Assemblyman Segerblom:

I am more interested in a way to have that be a public record so we could all agree on the process, people could follow it, and complainants could be informed what the process is. Right now it is my understanding that if you file a complaint, even though that is confidential, there is no law that says you cannot publicize the fact you have filed a complaint.

Patrick Hearn:

There is. There is a restriction on who the complainant can discuss, and what they can tell, when they discuss the complaint. That, too, has certain timelines depending upon the status of the case and whether the case has reached the public review part or not.

Assemblyman Settlemeyer:

Ninety-nine percent of the people in politics are worthwhile people, but that 1 percent is what everybody and all the media focuses on and they make us look rather bad. I agree completely with the concept of extending the timeframe so those few bad apples do not corrupt our system. You indicate that 99 percent of the people are waiving the "statute of limitations," per se, so how much time does it take you to process that paperwork?

Patrick Hearn:

I would say the average case is four to six months.

Assemblyman Settlemeyer:

I also concur with some of the previous speakers that sometimes people will use these things in an adverse way to defame their opponent. The length of time for a typical campaign, from filing to election, is five to six months and I would hate to see someone have more than enough time to sit there the entire race with this hanging over them. I would like to see a timeframe we could discuss and agree on.

Assemblywoman Gansert:

Could we get some statistics from you concerning numbers of cases filed, how many went beyond the 45-day deadline, and what the average length of time to get things resolved truly is? We could then determine whether we should be extending this, and if so, by how much.

Patrick Hearn:

I would be happy to.

Craig Walton, President, Nevada Center for Public Ethics:

We are speaking in support of A.B. 143 ([Exhibit D](#)). The part that gives the complainant the opportunity to know where the complaint has gone is crucial. It is currently not possible to know anything until one reads it in the papers, or there is a final adjudication at the end of a hearing, or a final disposition by the screening panel that the screening has been completed. The new provision in A.B. 143 is very welcome and will give heart to Nevadans everywhere that it may be worthwhile to try to take this process seriously.

Concerning the timeline question, that is clearly up in the air. If it were true that 99.9 percent waive the timeline, the four parties in Nye County who were told nothing and learned of the dismissal after it was over would signify that there had been 4,000 complaints in that period of time. Ninety-nine percent of 4,000 would total 4. I do not think we had that number of complaints in front

of the Ethics Commission in the two or three years we are discussing. We have been told there are about 80 complaints a year at the present time, so the numbers do not work out.

The current language in Section 1, NRS (*Nevada Revised Statutes*) 281.511, subsection 1, is the advisory part where a public official gets to ask for an advisory opinion. Subsection 2 is where a complaint can be brought by the Commission or by a citizen of Nevada. The timeline questions are mentioned at line 7, page 3, so you end up having the same timeline for the advisory and for the complaint being investigated. That is a problem. How long does it take to prepare an advisory when a public official asks for one? If it took a year or even six months it would probably be useless to that person. I would want to see some dispatch in the case of advisories. In the other case, as has been made clear, you have to give the subject a chance to prepare an answer. There can be withholding of documents, which we have seen in a couple of cases, and attempts to string it out. We have seen cases where, in fact, the person played out the clock and got it dismissed because they did not waive the 45-days, or the Commission decided to waive it.

Clearly, what we have to go for is a timely process. Someone has to make a judgment call that it is "timely." If you try to set a fixed date like four to six months, it might be a low average, but even there we would have to say something like, "in a timely manner or four to six months" or something like that to signify to the Nevada Commission on Ethics and to the public that the investigation is being done with as much dispatch as is possible given the facts and the difficulty of the case. That could restore faith in this process. In the spirit of a friendly amendment, we would like to recommend separation of the advisory task from the complaint task so the first can be more prompt and the latter can be as long as it needs to be, but within some reasonable time.

Chair Koivisto:

Is there some way we can deal with people "timing out"? It seems to me that if someone has truly committed an ethical breach they should not be able to stall until time runs out.

Patrick Hearn:

I do not have a short answer to that. I would really like to bring some statistics back to the Committee that can show both the length of time it takes to issue an advisory opinion and the length of time to process a complaint. Those two functions are different even though the request for an opinion is included in that same main section of law. I would feel more comfortable if I could bring you some real numbers.

Chair Koivisto:

That would be good. Thank you very much.

Further questions from the Committee? [There were none.] We will hold A.B. 143 and wait for more information. I will close the hearing on A.B. 143 and we will discuss it further at a work session. We are adjourned [at 4:54 p.m.].

RESPECTFULLY SUBMITTED:

Terry Horgan
Committee Secretary

APPROVED BY:

Assemblywoman Ellen Koivisto, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Elections, Procedures, Ethics, and Constitutional Amendments

Date: February 27, 2007

Time of Meeting: 3:45 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
AB 143	C	Assemblyman Ed Goedhart	5 letters concerning the Nevada Commission on Ethics
AB 143	D	Craig Walton, President, Nevada Center for Public Ethics	Letter in support with suggestions for language changes