

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE JOINT
RESOLUTION 1075

By: Reynolds of the House

and

Brogdon of the Senate

AS INTRODUCED

A Joint Resolution relating to Rules of the Ethics Commission; amending Rule 257:1-1-6 of the Rules of the Ethics Commission (74 O.S. Supp. 2005, Ch. 62, App.), which relates to powers and responsibilities of the Commission; modifying requirement that Commission records be made available to the public; directing distribution; and declaring an emergency.

WHEREAS, pursuant to Sections 250.2 and 308 of Title 75 of the Oklahoma Statutes, the Legislature reserves the right to designate the method for rule promulgation, establish policy, approve, delay, suspend, veto, or amend the implementation of any rule or proposed rule while under review by the Legislature, determine that a rule is not consistent with legislative intent, and suspend any rule or any portion thereof at any time, and the Legislature may disapprove any rule or amendment to a rule which has been transmitted for legislative review; and

WHEREAS, pursuant to Rule 257:1-1-1 of the Rules of the Ethics Commission (74 O.S. Supp. 2005, Chapter 62, App.), the Ethics Commission promulgates rules of ethical conduct for campaigns for elective state office and for campaigns for initiative and referendum and rules of ethical conduct for state officers and state employees; and

WHEREAS, permanent Rule 257:1-1-6 establishes the requirements, procedures and standards for making records available to the public; and

WHEREAS, the Legislature recognizes that Rule 257:1-1-6 which was adopted by the Ethics Commission on February 8, 1994, and submitted to the Legislature and the Governor on February 8, 1994, in its current form, may not be consistent with legislative intent and the public policy of this state.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE 2ND SESSION OF THE 50TH OKLAHOMA LEGISLATURE:

SECTION 1. AMENDATORY Rule 257:1-1-6 of the Rules of the Ethics Commission (74 O.S. Supp. 2005, Chapter 62, App.), is amended to read as follows:

Rule 257:1-1-6. (a) Election of officers. In October of each year, or at the next Commission meeting after September, the Commission shall choose a chair and vice chair from among themselves. No member shall serve more than one consecutive year as chair.

(b) Repository. The Commission shall serve as the official repository for statements of financial interests, statements of organization, last minute contributions reports, last minute independent expenditures reports, statements of inactivity, campaign contributions and expenditures reports, lobbyist expenditure reports and such other documents filed by committees, state officers, state employees, lobbyists and other persons as pertain to its duties.

(c) Voluntary filings. The Commission shall accept and file any information voluntarily supplied that exceeds the requirements of this title; provided, the Commission shall not require the disclosure of any information other than as specifically provided by this title or which helps identify the filer or committee.

(d) Distribution of forms. The Commission shall distribute forms, and computer diskettes with form software, upon which information shall be provided as required by this title and copies of Article XXIX of the Oklahoma Constitution and this title to the persons required to submit forms and provide an adequate supply of

such forms and computer diskettes with form software to all candidates, committees, officers, and employees required to submit or electronically transmit such forms.

(e) Review of statements. The Commission shall review a random sample of registrations, reports and statements filed in accordance with this title for compliance with its provisions and notify the individual, if a candidate, or treasurer or, in the treasurer's absence, the deputy treasurer, if a committee other than a candidate committee, on whose behalf the report or statement is filed, or filer of any material omission or deficiency.

(f) Availability of public records. The Commission shall make all registrations, reports and statements filed with it available to the public during regular business hours, subject to the Open Records Act, Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes, within two (2) business days of receipt. The Commission shall make the information available on their web site or make a copy, not the original, available for public inspection upon demand. Further, the public will have the right to employ portable computers, scanners and copiers while inspecting the documents. No original or record copies of reports, registrations or statements shall be removed from the office of the Commission. No information or identification shall be required by the Commission as a condition of viewing or copying a registration, report or statement which is available to the public.

(g) Preservation of documents. The Commission shall preserve such reports, registrations and statements in accordance with the Records Management Act, Section 201 et seq. of Title 67 of the Oklahoma Statutes, or for a period of at least five (5) years from date of receipt.

(h) Ethics interpretations. The Commission may, in its discretion and where appropriate, issue ethics interpretations pertaining to the provisions of this title when requested by any

person or committee who may be subject to the jurisdiction of the Commission. Before issuing an ethics interpretation, the Commission shall announce its consideration of an ethics interpretation at a meeting of the Commission, provide interested persons with a copy of the request for the ethics interpretation with sufficient deletions to prevent the disclosure of the identity of the person or persons involved in the situations presented in the request for the ethics interpretation, schedule and provide notice of a hearing on the request no fewer than thirty (30) days after the announcement and accept both written and oral comments on the request at the hearing. At least five (5) days before the hearing, Commission staff comments and/or draft ethics interpretations shall be made available to the public for comment. Should the Commission determine that a request requires a response more quickly than the notice and hearing would permit, the Commission may issue a confidential "emergency opinion" without notice and a hearing, and such an emergency opinion shall apply only to the person making the request and shall be limited to the specific fact situation included in the request.

Notwithstanding the issuance of such an emergency opinion, the request for an ethics interpretation shall be scheduled for notice and hearing, the same as any other request. If the ethics interpretation thereafter adopted is different than the emergency opinion, the ethics interpretation shall be given prospective effect. The Commission shall make all ethics interpretations issued available to the public within thirty (30) days of the date of issuance. Provided, failure of a person to request an ethics interpretation shall have no relevance in any subsequent proceeding under this title involving such person. Provided further, such interpretation shall be binding on the Commission in any subsequent proceeding under this title. The Commission shall publish its ethics interpretations annually; provided that sufficient deletions shall be made by the Commission in published ethics interpretations

or ethics interpretations made available to the public to prevent the disclosure of the identity of the person or persons involved in the situations presented in the ethics interpretations. The executive director or the general counsel may issue informal written opinions, as time permits and with the prior approval of the chair or vice chair, pertaining to the provisions of this title on questions that are susceptible to a single analysis by the clear language of the rule and are not the subject of litigation, investigation or legislation. The Commission shall publish informal written opinions annually; provided that sufficient deletions shall be made by the Commission in published informal written opinions or informal written opinions made available to the public to prevent the disclosure of the identity of the person or persons involved in the situations presented in the informal written opinions. If the matter is subject to more than one analysis, the executive director or general counsel may give an oral opinion but shall inform the petitioner of the dual analysis and the need to request a formal ethics interpretation and shall provide the Commission with an account of the question or questions asked and the rule provision or provisions to which they pertain.

(i) Hearings and subpoenas. The Commission shall, pursuant to this title and as specifically authorized by law, hold hearings, subpoena witnesses upon a vote of a majority of the members of the Commission, and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other items relevant to the performance of the Commission's duties or exercise of its powers.

(j) Investigations. The Ethics Commission shall conduct investigations and hearings concerning alleged violations of its rules governing ethical conduct for campaigns for elective state office, campaigns for initiatives and referenda and for ethical

conduct of state officers and state employees and certify its own acts and records and determine whether to investigate and act upon an allegation.

(k) Prosecution. The Commission shall, when it deems appropriate, prosecute in the district court of the county where the violation occurred violations of the provisions of this title governing ethical conduct of campaigns, state officers, state employees, and lobbyists. Where uncertainty exists as to the county in which the violation occurred, the Commission may prosecute in any county in which the evidence indicates the violation might have been committed.

(l) Settlement. The Commission may settle allegations or investigations and accept payment of fines without court order. Fines paid shall be deposited with the State Treasurer to the credit of the General Revenue Fund of the State of Oklahoma.

(m) Education. The Commission shall initiate and continue programs for the purpose of educating officers, employees and citizens of this state on matters of ethics and government service. The Commission shall publish and make available to the public and to persons subject to this title explanatory information concerning this title, the duties imposed by it and the means for enforcing it. The Commission may conduct research concerning state governmental ethics and implement the educational programs it considers necessary to effectuate this title. The Commission may work with the Oklahoma Library for the Blind and Physically Handicapped toward rendering the rules in both braille and on audio tape. Subject to staff and budgetary restraints, the Commission shall provide orientation courses on the requirements of this title.

(n) Promulgate constitutional rules. After public hearing, the Commission shall promulgate rules of ethical conduct for campaigns for elective state office, for campaigns for initiatives and referenda and for state officers and employees, including civil

penalties for violation of those rules, pursuant to the provisions of Section 3 of Article XXIX of the Oklahoma Constitution. An amendment, which is not sponsored by a commissioner, shall not be included in the draft of amendments subject to a final vote of the Commission.

(o) Annual Report. No later than December 1 of each year, the Commission shall report to the five appointing authorities on the Commission's activities in the preceding fiscal year. The report shall contain the names and duties of each individual employed by the Commission and a summary of Commission determinations and ethics interpretations. The Commission shall prevent disclosure of the identity of a person involved in investigations, complaints or ethics interpretations. The report may contain other information on matters within the Commission's jurisdiction and recommendations for legislation as the Commission deems desirable.

(p) The Ethics Commission may take other actions it deems appropriate to fulfill its constitutional or statutory duties.

SECTION 2. The Secretary of State is directed to distribute copies of this resolution to the Governor and the Executive Director of the Ethics Commission.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

50-2-10276 TG 05/17/06