

Oklahoma State Senate

JOSH BRECHEEN
SENATOR
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April 11, 2014

The Honorable Scott Pruitt
Attorney General
The State of Oklahoma
313 NE 21st Street
Oklahoma City, OK 73105

Dear Attorney General Pruitt:

I respectfully request a formal legal opinion by your office on the question posed in this letter on the issues of conflict of interest and remedies related to violations of court orders. However, I would like to begin with background information on the matter.

Over the past several weeks I have been contacted by constituents concerning in a potential "conflict of interest" scenario as it pertains to current membership of the Oklahoma Water Resources Board (OWRB).

To be specific, the concern is that a certain well-respected member of the OWRB, Tom Buchanan, may now lack the ability to remain subjective/independent as a voting board member of the OWRB due to Mr. Buchanan's current role as president of the Oklahoma Farm Bureau and as general manager of the Altus-Lugert Irrigation District. In addition, his involvement in a lawsuit between OWRB and Farm Bureau is also a concern.

As you may be aware, through recent news articles bringing attention to this particular situation, Mr. Buchanan is in the rather unique position of suing and being sued simultaneously. Questions are being asked about the involvement of board members in consultation with legal counsel on both sides of the argument and how that may factor into protecting the state's interest as an OWRB board member. As you know, OWRB board members make decisions that directly impact the utilization of one of our most precious state resources, and the state has historically relied upon impartial decisions to serve the good of all.

Reportedly, and to his credit, Mr. Buchanan has recused himself from certain OWRB voting when such a vote was connected with the Oklahoma Farm Bureau lawsuit. The question is whether or not this goes far enough, and if deliberation, conversation, and persuasion with other board members prior to the vote were conducted and whether that is acceptable even though the member recused from the vote. The argument is the following: are board members

legally permitted to debate and influence other board members as long as one recuses himself or herself from a vote.

In addition, ongoing lawsuits where Oklahoma's water issues are at stake both at the federal and state level are understood to be under a "gag order" issued to the interested parties. There are allegations that public statements have been made by the member that attempt to indicate a position or persuade public opinion.

As our state's chief legal advisor I respectfully request your legal opinion on the following:

1. What laws in our state exist on the issue of "conflict of interest" as it relates to membership of a board like OWRB and its members and other positions that may be held by a member? What is the proper remedy or conduct for a member that learns of such conflict?

2. If there is a proper way to handle a conflict of interest by a member and the member does indeed have a conflict of interest but does not choose to follow the proper method of avoiding the conflict, what are the remedies available?

3. Does Mr. Buchanan's role as vice-chair of the Oklahoma Water Resources Board and his role as president of the Oklahoma Farm Bureau and with Lugert-Altus Irrigation District allow him to participate in any manner in order to discuss and deliberate the issues in ongoing litigation where the entities he represents are interested parties and that being privy to legal counsel on both sides puts him and the OWRB in a compromised position even though he may recuse from any vote?

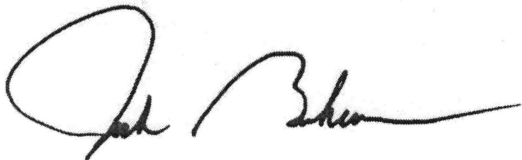
4. When there are existing, ongoing lawsuits at the state and federal level that issue "gag orders" for the interested parties- and the members of the OWRB are deemed interested parties- and a member chooses to make public statements on details and positions within that litigation, what are the remedies to stop such conduct?

This letter is by no means a complaint against Mr. Buchanan but is simply a question as it relates to this situation and practice. There have been similar "conflict of interest" scenarios surrounding other state board members who also had ties to private advocacy groups. Accordingly, your response may be constructive in determining the legality of future actions by future board members. Our state board members could be well served by your response, and it might also lead to the consideration of state law, if needed, to provide more adequate guidelines in avoiding conflicts of interests or perceived conflicts of interest scenarios.

I certainly support citizen involvement on our state agency boards and commissions, but if board members' decisions are potentially influenced by special interests that could overshadow state interests, it behooves us all to ask these questions.

I believe Mr. Buchanan would join me in requesting your opinion to remove any suspicions of impropriety.

Sincerely,





OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

May 23, 2014

The Honorable Josh Brecheen
State Senator, District 6
2300 N. Lincoln Blvd., Room 413
Oklahoma City, Oklahoma 73105

Re: Letter to Attorney General, Internal Tracking No. Q-11

Dear Senator Brecheen:

We have received your letter in which you ask for a formal legal opinion on a number of questions related to potential conflicts of interest by members of the Oklahoma Water Resource Board (OWRB).

We are unable to issue an opinion for two reasons. First, your questions relate to issues largely within the purview of the Ethics Commission. The Oklahoma Constitution gives the Ethics Commission the power to interpret its own rules. OKLA. CONST. art. XXIX, § 5. As a result, this office typically refrains from opining on such matters, and instead defers to the Ethics Commission.

Secondly, we only issue opinions on questions of law. Your questions are primarily fact questions, relating to specific instances of conduct or potential conduct by Tom Buchanan and other Board members. You ask us to apply the law to fact situations to determine whether these Board members have or may engage in misconduct such that they may have a conflict of interest. Such an analysis is not authorized by, and is not the purpose of, an Attorney General opinion. *See* 74 O.S.2011, § 18b(A)(5).

Thank you for your letter and for the opportunity to respond.

Respectfully submitted,

A handwritten signature in black ink that reads "Sandra D. Rinehart".

SANDRA D. RINEHART
SENIOR ASSISTANT ATTORNEY GENERAL

Mr. Lee Slater, Executive Director
Oklahoma Ethics Commission
2300 North Lincoln Blvd, Room B-5
Oklahoma City, Oklahoma 73105

RE: Ethics Opinion

Dear Mr. Slater:

I respectfully request an interpretation of the Oklahoma ethics laws/rules from your office on the questions posed in this letter on the issues of conflict of interest and remedies related to violations of court orders. However, I would like to begin with background information on the matter.

Over the past several weeks I have been contacted by constituents in relation to a potential "conflict of interest" scenario as it pertains to current membership of the Oklahoma Water Resources Board (OWRB).

To be specific, the concern is that a certain member of the OWRB (referred herein as "member") may now lack the ability to remain subjective/independent as a voting board member of the OWRB due to the member's current role as President of Oklahoma Farm Bureau and as a staff member of the Lugert-Altus Irrigation District and lawsuits involving OWRB and Farm Bureau.

The member is in the rather unique position of suing and being sued simultaneously. Questions are being asked about the involvement of board members in consultation with legal counsel on both sides of the argument and how that may factor into protecting the states interest as an OWRB board member. As you know, OWRB board members make decisions that directly impact the utilization of one of our most precious state resources and the state has historically relied upon impartial decisions to serve the good of all.

Reportedly, and to the credit of the member, the member has recused from certain OWRB votes when such a vote was connected with the Oklahoma Farm Bureau lawsuit. There has been a question of whether or not this goes far enough and if deliberation, conversation, and persuasion with other board members prior to the vote were conducted and whether that is acceptable even though the member recused from the vote. Supposedly, the belief held by certain board members that it is legally permissible to debate and influence other board members as long as you recuse yourself from a vote.

In addition, ongoing lawsuits where Oklahoma's water issues are at stake both at the federal and state level are understood to be under a "gag order" issued to the interested parties. There are allegations

that public statements have been made by the member that attempt to indicate a position or persuade public opinion.

I respectfully request your opinion on:

1. What ethics rules/laws in our state exist **on the issue of “conflict of interest”** as it relates to membership of a board like OWRB and its members and other positions that may be held by a member? What is the proper remedy or conduct for a member that learns of such conflict?

2. If there is a proper way to handle a conflict of interest by a member and the member does indeed have a conflict of interest but does not choose to follow the proper method of avoiding the conflict, what are the remedies available?

3. Does **the member’s** role as Vice-Chair of the Oklahoma Water Resources Board and the role as President of Oklahoma Farm Bureau and as a staff member with the Lugert-Altus Irrigation District allow the member to participate in any manner in order to discuss and deliberate the issues in ongoing litigation where the entities represented are interested parties and that being privy to legal counsel on both sides puts the member and the state OWRB board in a compromised position even though the member may recuse from any vote?

4. When there are **existing, ongoing lawsuits at the state and federal level that issue “gag orders” for the interested parties and the members of the OWRB deemed interested parties** and a member chooses to make public statements on details and positions within that litigation, what are the remedies to stop such conduct?

I certainly support citizen involvement on our state agency boards and commissions but if board members decisions are potentially influenced by special interests that could overshadow state interests, it behooves us all to ask these questions.

I truly believe the member wants to provide the best service to the state and wants to do what is right and that is why your input can be so useful in this matter to ensure all parties are made aware how to follow the letter of the law given these issues their complexities.

If your office requires any additional information or clarification of any item cited in this request, please feel free to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Baker". The signature is fluid and cursive, with a large initial "P" and a long horizontal stroke at the end.



STATE OF OKLAHOMA
ETHICS COMMISSION

August 20, 2014

The Honorable Josh Brecheen
State Senator
State Capitol
Oklahoma City, OK 73105

Re: Request for Ethics Interpretation

Dear Senator Brecheen:

Our recent communications reminded me that I had failed to follow up on your request for an ethics interpretation regarding the Oklahoma Water Resources Board.

Under the Constitution, the Ethics Commission "may respond, pursuant to its rules, to questions of specific individuals seeking an interpretation of the Commission's rules governing ethical conduct for campaigns, state officers, or state employees." Okla. Const. art. XXIX, § 5. Ethics Rule 257:1-1-6 provides, in part, "The Commission may, in its discretion and where appropriate, issue ethics interpretations pertaining to the provisions of [these Rules] when requested by any person or committee who may be subject to the jurisdiction of the Commission." The Commission has established as a matter of policy that it will not issue ethics interpretations regarding third parties. The Commission will consider interpretations only as the Rules apply to the individual or committee requesting the opinion.

For the foregoing reason, the Commission will not issue a formal ethics interpretation in response to your request. I would be happy to informally discuss the issues you raised at a mutually convenient time.

Sincerely,

A handwritten signature in black ink, appearing to be "Lee Slater", written over a horizontal line.

Lee Slater