

BEFORE THE ETHICS COMMISSION

RECEIVED
ETHICS

In the matter of the complaint of)
)
Charlette Hearne, individually)
and on behalf of Oklahomans)
for Responsible Water Policy,)
)
 Informant and Complainant) No. _____
)
 against)
)
Tom Buchanan)
)
 Respondent)

2014 MAY -8 A 9:22

INFORMATION AND COMPLAINT

Charlette Hearne, individually and on behalf of Oklahomans for Responsible Water Policy, hereby alleges a violation of the Political Subdivisions Ethics Act or Constitutional Ethics Rules, Section(s) 257:20-1-4, 257:20-1-3, 257:20-1-6, 257:20-1-8, 257:20-1-9 by Tom Buchanan whose mailing address is c/o Oklahoma Farm Bureau, 2501 N. Stiles, Oklahoma City, OK 73105 and/or c/o Oklahoma Water Resources Board, 3800 N. Classen Blvd., Oklahoma City, OK 73118, during the following time periods: intermittently from June 14, 2011 to approximately November 16, 2013, and continuously from November 16, 2013, to the present as more fully described below. The facts upon which this complaint or information is based are as follows:

INTRODUCTION

The following narrative summarizes a set of facts, as then applied to several rules of the Oklahoma Ethics Commission, that illustrate an inherent, comprehensive, and ongoing conflict of interest relating to Tom Buchanan's dual service as, first, a State Officer on the Oklahoma Water Resources Board (OWRB) and, second, concurrent service as, in particular, the chief executive officer of the Oklahoma Farm Bureau (OFB). During the period of his dual employment, Buchanan has used his position on the OWRB, either expressly or implicitly, to advance the specific interests of the OFB, which course of conduct we allege violates the law as follows—

1. Violation of misuse of office rules (OAC 257:20-1-4) (a) by using his status as a State Officer to secure other employment (*namely*, as OFB President); (b) disclosing or appearing to disclose confidential information he obtained due to his status as a State Officer; and (c) accepting non-state employment that undermined his ability to exercise independent judgment in his capacity as a State Officer;
2. Violation of representation of others rule (OAC 257:20-1-6) by acting on behalf of his non-state employer while performing his duties as a State Officer; and

CONFIDENTIAL DOCUMENT—DO NOT FAX

3. Violation of interest-benefit rule (OAC 257:20-1-6) by participating in the discussion of, voting on, influencing or attempting to influence official OWRB actions in which his non-state employer has both a pecuniary interest and a reasonably foreseeable benefit.

In addition to calling for a substantive investigation of these allegations by the Ethics Commission, we submit that allowing such conduct to continue without remedy or oversight contributes to an ongoing injury to the public's faith in the integrity of State government.

FACTUAL INFORMATION

Tom Buchanan ("Buchanan") has served on the Oklahoma Water Resources Board ("OWRB") since June 14 2011.¹ The OWRB elected him to serve as Secretary in March 2012, and as Vice Chair in July 2013. The OWRB's organic statute requires that "[a]t all times the membership of the [OWRB] shall have represented on it at least one member well versed in each of the following major types of water use: recreational, industrial, irrigational, municipal, rural residential, agricultural and soil conservation work;"² the OWRB website identifies Buchanan as an at large board member representing irrigation water use; his term expires in May 2018.³ Buchanan's position on the OWRB makes him a "Public Member" and "State Officer" and is therefore governed by the Ethics Rules.⁴ For all times relevant to these facts, except for occasional abstentions, Buchanan has participated in briefings, discussions, and votes on rule-makings and administrative adjudications within the scope of the OWRB's statutory responsibilities.

The OWRB is a regulatory agency of the State of Oklahoma with primary responsibility for, among other things, overseeing surface water and groundwater use allocations under state law, conducting statewide water planning activities, and overseeing the distribution of various state and federal dollars relating to water and wastewater infrastructure, technical studies, and drought relief.⁵ The OWRB's duties with respect to groundwater include the issuance of groundwater permits that, in many cases, allocate the amount of water available from a particular source to various uses and various surface owners.⁶ Additionally, it has been the OWRB's duty,

¹ Oklahoma Water Resources Board, *Meeting Minutes*, 2 (June 14, 2011), https://www.owrb.ok.gov/news/meetings/board/board_pdf/2011/bdminutes_0611.pdf.

² 82 O.S. §1085.1(A).

³ Oklahoma Water Resources Board, *Board Members of the Oklahoma Water Resources Board*, (Last Updated Nov. 21, 2013), <http://www.owrb.ok.gov/about/management/board.php>; Oklahoma Farm Report, *Tom Buchanan of Jackson County Elected President of Oklahoma Farm Bureau* (Nov. 17, 2013), http://www.oklahomafarmreport.com/wire/news/2013/11/06536_BuchananNewOFBPresident11172013_145813.php#.Uz73i_IdUeh.

⁴ Okla. Admin. Code § 257:1-1-2 ("Public member" means a member appointed to a compensated or uncompensated part-time position on a board, commission, council, authority, bureau, committee, state beneficial public trust, or other establishment of the executive, legislative or judicial branch of the State of Oklahoma "State Officer" means an elective, appointed or employed officer, including a public member, in the executive, judicial or legislative branch of the State of Oklahoma.").

⁵ Oklahoma Water Resources Board, *About Us* (Last Updated Feb. 10, 2014), <http://www.owrb.ok.gov/about/index.php>; See also 82 Okla. Stat. §§ 184.1, 1085.17.

⁶ See Okla. Admin. Code § 785:30-1-4.

in accordance with 82 Okla. Stat. § 1020.9A, to “complete[] a hydrological study and approve[] a maximum annual yield” (“MAY”) for each groundwater basin in the State, including most recently the Arbuckle-Simpson Groundwater Basin. Prior to the completion of the Arbuckle-Simpson MAY determination, the OWRB issued groundwater allocation permits on the basis of a statutorily presumed two acre-feet/acre per year minimum, but once a MAY is determined for a groundwater basin, the OWRB must reform previously issued permits and issue all future permits in accord with an equal proportionate share based on that MAY.⁷ Following the completion of its multi-year study of the Arbuckle-Simpson Groundwater Basin, the OWRB conducted an administrative hearing to determine the MAY on May 15, 2013, the hearing examiner issued an order on October 3, 2013, and the OWRB subsequently approved that MAY order at its regular meeting on October 23, 2013.⁸

The OWRB’s regulatory power also includes the authority to contract for storage in certain water storage facilities. Exercising that authority, the OWRB entered into a contract with the Oklahoma City Water Utility Trust on June 11, 2010, that purports to transfer all of the State’s rights to store water in Sardis Lake⁹—a U.S. Army Corps of Engineers facility that is operated for flood control, water supply, recreation, and fish and wildlife purposes, to which the State holds all storage rights pursuant to a contract with the Corps.¹⁰ The June 2010 contract also provides certain procedures governing the OWRB’s issuance of a water use permit to the Oklahoma City Water Utility Trust at a later date.¹¹ The OWRB’s agreement with the Oklahoma City Water Utility Trust on behalf of the State precipitated a lawsuit by the Chickasaw Nation and the Choctaw Nation of Oklahoma, two federally recognized American Indian tribes (collectively the “Tribes”), in August 2012.¹² The Tribes alleged in this lawsuit that the State lacks the unilateral authority to permit massive transbasin exports of water from the tribes’ treaty area on the specific grounds that such action would violate the Tribes’ federal law rights, undermine recreational and ecological water values (including instream flows), and deprive the treaty area of water necessary for its long-term health and sustainability.¹³ As a member of the OWRB, Buchanan is a named party-defendant in that lawsuit¹⁴ and, thus, is privy to “executive

⁷ See 82 Okla. Stat. §§ 1020.5, 1020.9; Okla. Admin. Code § 785:30-5-2(b).

⁸ Oklahoma Water Resources Board, *Arbuckle-Simpson Maximum Annual Yield*, (Last Updated Jan. 13, 2014), https://www.owrb.ok.gov/util/rules/arbucklesimpson_hearing.php.

⁹ Oklahoma Water Resources Board, *Special Meeting Agenda* (June 11, 2010), http://www.owrb.ok.gov/news/meetings/board/board_pdf/2010/bdagenda_0610spec.pdf; *Storage Contract Transfer Agreement Between Oklahoma City Water Utilities Trust and State of Oklahoma Water Resources Board* (June 7, 2010), <http://www.okc.gov/AgendaPub/cache/2/5loacf454yzxqg45pikbww45/91750105012014045751810.PDF>.

¹⁰ See Approve Storage Contract Transfer Agreement USA-OK Sardis Agreement, *Contract Between the United States of America and The Water Conservation Storage Commission of the State of Oklahoma for Water Storage in Clayton Lake*, 10–24 (April 9, 1974), <http://www.okc.gov/AgendaPub/cache/2/5loacf454yzxqg45pikbww45/91750305012014050303119.PDF>.

¹¹ *Storage Contract Transfer Agreement Between Oklahoma City Water Utilities Trust and State of Oklahoma Water Resources Board*, *supra* note 9.

¹² See Complaint, *Chickasaw Nation, et al. v. Fallin, et al.*, No. CIV–11–927–C, 2011 WL 3629363 (August 18, 2011) (hereinafter Tribes’ Lawsuit).

¹³ *Id.*

¹⁴ *Id.*

session” briefings from the OWRB’s legal counsel relating to attorney-client privileged matters associated with the handling of the lawsuit.¹⁵

In addition to and concurrent with his performance of his duties as a State Officer, Buchanan has long-served as a member of the OFB’s board and, in November 2013, was elected President of that organization¹⁶ after he campaigned in a manner that “highlighted his understanding of water issues as the current Vice Chairman of the Oklahoma Water Resources Board to the delegates.”¹⁷ The OFB is a political outreach and advocacy organization set up to push policy on behalf of its business interests and farm and ranch operations.¹⁸ The OFB itself does not provide services to its members but instead services are rendered by its affiliates the Oklahoma Farm Bureau Legal Foundation (OFBLF)¹⁹ and Oklahoma Farm Bureau Insurance.²⁰ As President, Buchanan’s duties and actions serve the business interests of the OFB and its affiliated companies.

Based on information and belief, Buchanan’s position as a OFB board member entitled him to salary and benefits and as OFB President Buchanan is entitled to an annual salary in excess of \$100,000.00, the use of a OFB owned or leased sports utility vehicle, the use of a OFB owned or leased downtown Oklahoma City condominium, and to travel expenses. It may be the case that Buchanan has opted to forgo the salary, but it can be confirmed that he avails himself of the other benefits.

The OFB has long had substantial interests in water policy and the outcome of matters before the OWRB.²¹ In fact, in early 2013, OFB leadership announced that water policy would be the organization’s number one legislative and regulatory priority.²² The OFB’s policy positions help to illustrate organization’s claimed interest in various water issues. For example, the OFB generally highlights private property rights to groundwater claimed by land owners under Oklahoma law.²³ The organization has also consistently stated its opposition to

¹⁵ Board minutes reflect that Buchanan participated in executive session discussions of the tribal claims litigation on September 13, 2011, November 8, 2011, December 13, 2011, February 13, 2012, March 13, 2012, April 10, 2012, June 12, 2012, August 21, 2012, September 18, 2012, December 18, 2012, January 15, 2014, February 19, 2013, March 19, 2013, May 21, 2013, July 16, 2013, September 17, 2013, and March 18, 2014. All OWRB Meeting Minutes are available at <https://www.owrb.ok.gov/news/meetings/board/board-mtgs.php>.

¹⁶ Oklahoma Farm Bureau, *Biographies—Oklahoma Farm Bureau President*, <http://www.okfarmbureau.org/index.php?action=news.biographies>.

¹⁷ Oklahoma Farm Report, *Tom Buchanan of Jackson County Elected President of Oklahoma Farm Bureau*, (Nov. 17, 2013), [http://www.oklahomafarmreport.com/wire/news/2013/11/06536_BuchananNewOFB President 11172013_145813.php#.Uz73i_IdUeh](http://www.oklahomafarmreport.com/wire/news/2013/11/06536_BuchananNewOFB%20President%2011172013_145813.php#.Uz73i_IdUeh).

¹⁸ Oklahoma Farm Bureau, *What is Farm Bureau?* (2014) <http://www.okfarmbureau.org/index.php?action=about.whatis>.

¹⁹ Oklahoma Farm Bureau Legal Foundation, *Terms and Conditions of Use* (2010) <http://ofblegalfoundation.org/legalNotice.aspx>.

²⁰ Oklahoma Farm Bureau Insurance, *Legal Notice*, <http://okfarminsurance.com/index.php?action=legalnotice>.

²¹ Oklahoma Farm Bureau Water Policy 2012 (attached).

²² *Water Tops the Legislative List*, Oklahoma Farm Bureau (Jan. 28, 2013)

<http://www.okfarmbureau.org/index.php?action=news.radiodetail&crowid=4068>; *Water, Runaway EPA Two Big Issues on OFB’s Priority List, John Collison Says*, Oklahoma Farm Report, February 22, 2013, http://oklahomafarmreport.com/wire/news/2013/02/06326_JohnCollison02222013b_140828.php.

²³ Oklahoma Farm Bureau Water Policy 2012, *supra* note 21.

recognizing tribal regulatory authority and instream flow protections,²⁴ and has more recently become a vocal proponent of water sales and exports,²⁵ all of which are issues that are implicated in the Tribes' lawsuit against the OWRB.²⁶

One issue that has drawn a particularly aggressive wave of OFB activity and which demonstrates a particular area of conflict is the OWRB's determination of the Arbuckle-Simpson MAY.²⁷ Among other things, the OFB argues that the OWRB has set the MAY too low²⁸ and, thus, limited access to groundwater resources and imposed a financial burden on land owners who will now have a reduced volume of water resources available to market.²⁹ The OFB has filed two lawsuits against the OWRB relating to the MAY determination,³⁰ a circumstance that Buchanan has publicly acknowledged manifest a clear conflict of interest; as he once put it, a situation in which "Tom Buchanan is suing Tom Buchanan."³¹ The OFB has also joined a third legal action related to the Arbuckle-Simpson MAY determination, though that action is now resolved.³² Each of these OFB actions, as well as their associated advocacy in administrative proceedings,³³ underscore the *direct* interest that Buchanan's non-state employer has in the OWRB's actions on this matter—and *his* performance of his duties *as a state official*.

Based on these and associated facts, one county chapter of the OFB—one that supports the OWRB's MAY determination and other work that the OFB, itself, opposes—has called for Buchanan's removal from the OWRB;³⁴ additionally, several legislators have requested an opinion from Attorney General Pruitt relating to what would constitute sufficient statutory "cause" for the removal of a sitting OWRB member.³⁵ As pressure has mounted, however,

²⁴ *Id.*

²⁵ See Oklahoma Farm Bureau, *Water Conservation and Resource Expansion are Vital for Healthy Ag Expansion, Tom Buchanan Says*, (February 19, 2013), http://oklahomafarmreport.com/wire/news/2013/02/05538_WaterIssues02192013b_164052.php; *Oklahoma Politician for sale of Water in SE Oklahoma*, YouTube.com (Jan. 24, 2014) <https://www.youtube.com/watch?v=08BSnNjw4eo>.

²⁶ See Tribes' Lawsuit, *supra*, note 12.

²⁷ *E.g., id.*; *Oklahoma Farm Bureau, et al., v. Oklahoma Water Resources Board*, Case No. CV-2013-2250 (October 24, 2013); *Oklahoma Farm Bureau Legal Foundation, et al., v. Oklahoma Water Resources Board*, Case No. CV-2013-2414 (Nov. 19, 2013).

²⁸ See Oklahoma Farm Bureau Water Policy 2012, *supra* note 21.

²⁹ Letter from LeAnna K. Covington to the OWRB (February 18, 2014) (hereinafter Covington Letter) (attached); Oklahoma Water Resources Board, *Meeting Minutes* (February 18, 2014), https://www.owrb.ok.gov/news/meetings/board/board_pdf/2014/bdminutes_0314.pdf.

³⁰ See *Oklahoma Farm Bureau, et al., v. Oklahoma Water Resources Board*, Case No. CV-2013-2250 (October 24, 2013) (hereinafter "*OFB v. OWRB*"); *Oklahoma Farm Bureau Legal Foundation, et al., v. Oklahoma Water Resources Board*, Case No. CV-2013-2414 (Nov. 19, 2013) (hereinafter "*OFBLF v. OWRB*").

³¹ Mark Showell, *Farm Bureau president and OWRB member, a conflict?*, Latimer County News-Tribune (Feb. 6, 2014) (attached).

³² See *Arbuckle Simpson Aquifer Protection Fed'n of Okla., Inc. v. Okla. Water Resources Bd.*, 2013 OK 29, -- P.3d

³³ See Letter from Marla R. Peek to The Honorable Emily Meazell, (May 15, 2012) (attached); see also *infra* notes 61–73, and accompanying text.

³⁴ See Showell, *Farm Bureau president and OWRB member, a conflict?*, *supra* note 31.

³⁵ Letter from Senators Jerry Ellis, Randy Bass, Gene Garrison, and Roger Ballenger, Representatives Curtis McDaniel, Brian Renegar, and Ed Cannaday to Attorney General, Scot Pruitt, (April 7, 2014) (attached); see also M. Scott Carter, *AG Opinion Requested on OWRB Vice Chairman*, (April 7, 2014) (attached).

Buchanan has reversed course with respect to his prior admission of a conflict of interest and has publicly asserted that not only does no conflict arise from his dual employment but that his role as OFB President and OWRB member *essentially serve the same purpose*³⁶—demonstrating a remarkable conflation of his private employment and public duties.

Meanwhile, beyond the express declaration of interest represented by the OFB filing a lawsuit, the *business* and *financial* nature of OFB's interests in the MAY determination can easily be discerned. For example, as noted, a lower MAY reduces the amount of groundwater available to individual farm and ranch owners, each of whom is either an *existing* or a *potential* OFB member or policy holder, and thus the organization has an ongoing interest in satisfying and/or recruiting these individuals as either members or policy holders. Accordingly, the OFB filed its legal actions and "adamantly opposed" elements of OWRB's rules promulgated for implementing the MAY³⁷—all on behalf of these land owners.

Moreover, the organization's primary revenue source—which Buchanan refers to as the "cash cow" that makes *all* of the organization's work possible—is the sale of farm and ranch insurance.³⁸ The OFB's insurance business is directly impacted by water availability for insured farms and ranches and would derive a direct pecuniary and reasonably foreseeable benefit from both the higher availability and the lower regulation of water availability. The OFB's revenues are directly impacted by the availability of water for sale each year because of its obligation to pay on drought-related crop failure claims and, as an insurance provider, it regularly assesses the risk of the contingencies that they insure, which risks are directly related to water availability.³⁹

Accordingly, the OFB's interest in these matters before the OWRB would appear to make good private business sense—no matter whether it is the organization's interest in satisfying current members and/or policy holders, securing new members and/or policy holders, or reducing the bottom line operating costs of its "cash cow." We allege, however, that what makes good private business sense for the OFB undermines Buchanan's ability to lawfully discharge his duties as a State Officer.

³⁶ See M. Scott Carter, *Water Official Under Fire: Groups Claim Buchanan's Posts Pose Conflict of Interest*, The Journal Record, (March 18, 2014) (attached); see also M. Scott Carter, *Group Calls for Resignation of Water Board Official*, The Journal Record, (March 24, 2014) (stating that he does not have a conflict of interest because he does not personally reap a financial gain from the positions) (attached); Jason Angus, *Buchanan: I have no plans to resign*, altustimes.com, (March 26, 2014), http://www.altustimes.com/news/home_top/3206368/Buchanan:-I-have-no-plans-to-resign.

³⁷ Covington Letter, *supra* note 29; see also Oklahoma Farm Bureau Water Policy 2012.

³⁸ Oklahoma Farm Report, *Tom Buchanan of Jackson County Elected President of Oklahoma Farm Bureau*, (Nov. 17, 2013) http://www.oklahomafarmreport.com/wire/news/2013/11/06536_BuchananNewOFBPresident11172013_145813.php#.Uyc4k167myA.

³⁹ See, e.g., Sam Knipp, *Agriculture Losses from Drought top \$2 Billion, The Farm Bureau*, (Aug. 31, 2011), <http://www.okfarmbureau.org/index.php?action=news.newsdetail&rowid=281>; *Crop Insurance Will Not Make Farmers Rich!*, (September 3, 2012) <http://www.okfarmbureau.org/index.php?action=news.radiodetail&rowid=3876>.

APPLICATION OF ETHICS RULES⁴⁰

Buchanan's role as President of the OFB jeopardizes his impartiality as a member of the OWRB and results in a conflict of interest when the OFB's interests are before the OWRB. Three main areas of the Ethics Rules are implicated by Buchanan's dual employment—the misuse of office rules,⁴¹ the representation of others rules,⁴² and the interest-benefit rules,⁴³ each of which is discussed below.

A. Buchanan Has Committed Multiple Violations of the Misuse of Office Rules.

1. Buchanan Violated the Misuse of Office Rules by Using His OWRB Position to Campaign for the OFB Presidency.

The misuse of office rules prohibit State Officers from using their positions to “secure special privileges, exemptions, or compensation” for themselves or others. These rules prohibit the “use or attempt[ed] use” of state office to secure such benefits, whether or not such use is effective. Buchanan's emphasis on his OWRB position during his campaign for the OFB Presidency violates these rules.⁴⁴ Campaigning on the grounds that he *currently* serves on the OWRB—as opposed to highlighting past service on the OWRB to demonstrate his experience, for example—is one form of using his State Officer position to benefit himself, personally. We submit that Buchanan's benefits as OFB President (such as the housing, vehicle, expenses, and salary discussed above) are sufficient to constitute “special privileges, exemptions, or compensation” under the Ethics Rules; the benefits would certainly qualify as compensation under the Rules' definition.⁴⁵ Furthermore, the benefits that the OFB extends to its chief executive are not remote, speculative, or indirect; instead, they are benefits that tangibly accrue, and have already accrued, to Buchanan as compensation for his employment. Because Buchanan used his position on the OWRB to gain his position as President of the OFB, he has used his state office to secure compensation for himself in violation of these rules.

⁴⁰ Each of the rules discussed in this Information and Complaint were promulgated by the Ethics Commission pursuant to article 29, section 3 of the Oklahoma Constitution and are found in chapter 20 of the Rules of the Ethics Commission, 74 OKLA. STAT. Ch. 62, Appendix—Title 257 (“Ethics Rules”).

⁴¹ Okla. Admin. Code §§ 257: 20-1-4(a)-(c).

⁴² §§ 257:20-1-6(d).

⁴³ § 257:20-1-8.

⁴⁴ See Oklahoma Farm Report, *Tom Buchanan of Jackson County Elected President of Oklahoma Farm Bureau*, (Nov. 17, 2013),

http://www.oklahomafarmreport.com/wire/news/2013/11/06536_BuchananNewOFBPresident11172013_145813.php#Uz73i_ldUeh.

⁴⁵ § 257:1-1-2 (“Compensation” (1) means: (A) an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, pledge, or transfer of money or anything of value; or (B) a contract, agreement, promise, or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, pledge, or transfer of money or anything of value, for services rendered or to be rendered.”).

2. Buchanan Appears to Have Violated the Misuse of Office Rule by Disclosing Confidential Information that He Had Access to Only Because He Is a State Officer.

The misuse of office rules prohibit State Officers and employees from disclosing confidential information acquired in the course of performing their official duties, using such information for personal purposes, or otherwise misusing such sensitive State assets.⁴⁶ State Officers and employees are often privy to confidential information through their employment. Buchanan certainly has had such access and there are specific examples where *his* access to certain information raises concern.

Buchanan has been privy to staff briefings relating to the MAY determination,⁴⁷ among other matters, which administrative action is now the subject of two OFB lawsuits against the agency.⁴⁸ Likewise, he regularly participates in Open Meetings Act⁴⁹ executive sessions relating to the Tribes' lawsuit against the OWRB.⁵⁰ Buchanan is thus privy to information that is plainly of interest to the OFB, which has consistently taken positions adverse to the MAY determination and implementation as well as contrary to assertions of tribal rights.⁵¹ Such access raises serious questions about his use of that information and his other employer's interest in that information.

Buchanan's access to such sensitive information that has obvious value to his non-State employer is *precisely* the kind of temptation this ethics rules are designed to prevent; the misuse of office rule serves to keep State Officers from being in such a position of temptation or conflicting loyalties. Additionally, it is the nature of confidentiality breaches arising from these circumstances that they can be extremely difficult to prove, while being nonetheless damaging to State and the public's interest. Accordingly, the rules take a *preventative* approach, rather than merely punitive; rather than allowing an individual to be in such a situation, the rules simply disallow dual employment that would create the temptation in the first place.

⁴⁶ § 257:20-1-4(b).

⁴⁷ Board minutes reflect that Buchanan participated in executive session discussions of the Tribal claims litigation on September 13, 2011, November 8, 2011, December 13, 2011, February 13, 2012, March 13, 2012, April 10, 2012, June 12, 2012, August 21, 2012, September 18, 2012, December 18, 2012, January 15, 2014, February 19, 2013, March 19, 2013, May 21, 2013, July 16, 2013, September 17, 2013, and March 18, 2014. All OWRB Meeting Minutes are available at <https://www.owrb.ok.gov/news/meetings/board/board-mtgs.php>.

⁴⁸ See *OFB v. OWRB*, and *OFBLF v. OWRB*, *supra* note 29.

⁴⁹ 25 OKLA. STAT. § 307(B)(4).

⁵⁰ E.g. Oklahoma Water Resources Board, *Meeting Minutes*, (July 17, 2012)

http://www.owrb.ok.gov/news/meetings/board/board_pdf/2012/bdminutes_0712.pdf. Other Meeting Minutes reflect Buchanan's participation in similar sessions at the following meetings: September 13, 2011, November 8, 2011, December 13, 2011, February 13, 2012, March 13, 2012, April 10, 2012, June 12, 2012, August 21, 2012, September 18, 2012, December 18, 2012, January 15, 2014, February 19, 2013, March 19, 2013, May 21, 2013, July 16, 2013, September 17, 2013, and March 18, 2014. All OWRB Meeting Minutes are available online at <https://www.owrb.ok.gov/news/meetings/board/board-mtgs.php>.

⁵¹ See Oklahoma Farm Bureau Water Policy 2012, *supra* note 21; Oklahoma Farm Bureau, *Water Conservation and Resource Expansion are Vital for Healthy Ag Expansion, Tom Buchanan Says* (Feb. 19, 2013), http://oklahomafarmreport.com/wire/news/2013/02/05538_WaterIssues02192013b_164052.php; *Oklahoma Politician for Sale of Water in SE Oklahoma*, YouTube.com (Jan. 24, 2014) <https://www.youtube.com/watch?v=08BSnNjw4eo>.

And there is evidence here that confidential evidence has been misused or compromised. For example, since those executive sessions relating to the Tribes' lawsuit, Buchanan and other OFB officials have publicly advocated water sales and for large-scale transbasin movement of water from southeast Oklahoma⁵²—matters that directly relate to the circumstances that triggered that lawsuit in the first instance.

Buchanan's access to confidential information raises significant questions as to whether his presence in executive sessions or even staff briefings is appropriate. At the very least, we call on the Ethics Commission to undertake a comprehensive investigation aimed to uncover the dissemination of any information from executive sessions or staff briefings relating to the OFB's lawsuits against the OWRB.

3. Buchanan Violated the Misuse of Office Rule by Accepting Non-State Employment that Undermines His Ability to Act Impartially and with Independent Judgment in Performance of His State Officer Duties.

The misuse of office rules limit State Officers' ability to pursue or accept secondary employment "that would impair his or her independence of judgment in the performance of his or her public duties."⁵³ The rule prohibits secondary employment where it affects the State Officer's independent judgment and impartiality.⁵⁴ Whether a State Officer's independence of judgment is impaired is a question of fact,⁵⁵ but as a general matter, independent judgment and impartiality of a State Officer is jeopardized where the officer is in a position to affect final decisions of the agency and those decisions affect the officer's business in his secondary employment.⁵⁶

The Ethics Commission explained in a 2002 Informal Opinion that dual employment would only be allowed under the Misuse of Office Rule where "[1] no conflict arises between duties imposed by the two [employers], [2] the hours of the two jobs are not contemporaneous, and [3] the primary employer is notified and provided a schedule of the secondary employment."⁵⁷ Secondary employment of State Officers is only allowed where all three requirements are met. The facts presented by Buchanan's dual employment present sufficient grounds to justify Ethics Commission action, including a requirement that Buchanan step down from his position on either the OWRB or the OFB. In the discussion that follows, we will summarize the first two elements noted above and offer our concluding allegation and proposed remedy.

⁵² Compare Oklahoma Farm Bureau Water Policy 2012, *supra* note 21 with Oklahoma Farm Bureau, *Water Conservation and Resource Expansion are Vital for Healthy Ag Expansion, Tom Buchanan Says*, (Feb. 19, 2013), http://oklahomafarmreport.com/wire/news/2013/02/05538_WaterIssues02192013b_164052.php, and *Oklahoma Politician for sale of Water in SE Oklahoma*, YouTube.com, (Jan. 24, 2014), <https://www.youtube.com/watch?v=08BSnNjw4eo>.

⁵³ § 257:20-1-4(c).

⁵⁴ *Id.*

⁵⁵ EI-1999-001; IO-2002-001; IO-2002-002.

⁵⁶ See DR-1986-001, reconstituted as AO-1986-001, reconstituted as EO-1986-001 (interpreting 74 OKLA. STAT. § 4241(6)). The opinion also noted that more facts would be needed to determine if the statute had been violated.

⁵⁷ IO-2002-002 (determining that an agency's general counsel could accept secondary employment with a law firm provided certain conditions were met).

a. Conflicts of Interest Exist Between the Duties Imposed Upon Buchanan by the OFB and by the OWRB

The duties that Buchanan owes the State and the OFB fundamentally and inescapably conflict—to wit, Buchanan’s duty of representation as OFB President and duty of impartiality as OWRB member cannot be reconciled. As the OFB’s chief executive, he owes a fiduciary duty to the organization in his representation of its interests, including the interests of the affiliated organizations, members, and policy holders, but as an appointed member of the OWRB, he owes the state an ethical obligation of unimpaired and independent judgment in the performance of agency duties.⁵⁸ Buchanan’s agency duties include maintaining unbiased and impartial judgment with respect to, for example, implementation of 82 Okla. Stat. § 1020.9A, through which the State tasked the OWRB with studying the Arbuckle-Simpson aquifer and setting a MAY that “will not reduce the natural flow of water from springs or streams emanating from said basin or subbasin.” The OFB, however, has long been adverse to the OWRB’s implementation of this statutory directive and has, as has been noted, filed multiple legal actions in relation to the OWRB’s final MAY determination.⁵⁹ Likewise, Buchanan’s dual masters place his duties in conflict in relation to instream flow policy questions, the lawsuit that the Chickasaw and Choctaw Nations filed relating to water management in southeast Oklahoma, and anything that the agency might do that could be perceived as impacting private property interests in water resources. On each of these issues, the OFB has taken express policy positions and acted to influence public policy.⁶⁰

We wish to emphasize, however, that the issue is not just that there is a high risk that his judgment might not be independent of the OFB’s; there is *concrete evidence* that he has taken action as a state official in furtherance of OFB positions. Since Buchanan’s appointment to the OWRB in 2011, he has consistently promoted the position of the OFB in OWRB meetings by, for example, advocating for the priority of reservoir yields over instream flows,⁶¹ questioning the instream flow methodologies, seeking to change established policy,⁶² and moving to table proposed administrative action.⁶³ Each of these actions is consistent with OFB positions on matters before the OWRB—even, with respect to the last item, on matters as picayune as the timing for consideration of the MAY determination, which Buchanan put in play at the February 13, 2012, meeting just days after the OFB had formally requested that precise delay.⁶⁴

A particularly clear example of Buchanan’s use of his position as a State Officer to further OFB advocacy, though, comes from the agency’s recent promulgation of chapter 30

⁵⁸ See § 257:20–1–4(c).

⁵⁹ See *OFB v. OWRB*, and *OFBLF v. OWRB*, *supra* note 29.

⁶⁰ *E.g.*, Oklahoma Farm Bureau Water Policy 2012, *supra* note 21.

⁶¹ Oklahoma Water Resources Board, *Meeting Minutes*, (April 12, 2011) http://www.owrb.ok.gov/news/meetings/board/board_pdf/2011/bdminutes_0411.pdf.

⁶² Oklahoma Water Resources Board, *Meeting Minutes*, (Sept. 11, 2011) http://www.owrb.ok.gov/news/meetings/board/board_pdf/2011/bdminutes_0911.pdf.

⁶³ Oklahoma Water Resources Board, *Meeting Minutes*, (Feb. 13, 2012) http://www.owrb.ok.gov/news/meetings/board/board_pdf/2012/bdminutes_0212.pdf; Oklahoma Water Resources Board, *Meeting Minutes*, (March 13, 2012) http://www.owrb.ok.gov/news/meetings/board/board_pdf/2012/bdminutes_0312.pdf.

⁶⁴ Letter from the Farm Bureau to the OWRB (Feb. 10, 2012) (attached).

rules. On January 21, 2014, Board staff presented the proposed rules to the Board—which rules included provisions for well spacing and, importantly, an Arbuckle-Simpson MAY compliance phase-in period—during this presentation, Buchanan fully participated and asked questions of staff,⁶⁵ notwithstanding the OFB’s ongoing litigation of the MAY.⁶⁶ Furthermore, on February, 18, 2014, the OFB delivered a letter to the Board⁶⁷—which Buchanan received *both* as an addressee and as a carbon copy, by virtue of his OWRB membership and his position as OFB President—advising him and the other OWRB members that the OFB “adamantly opposed” the proposed chapter 30 rules phase-in period on the alleged grounds that it would work a financial prejudice against those who would sell groundwater rights to municipalities that needed additional rights to come into compliance with the new MAY.⁶⁸ The letter concluded with “[o]n behalf of Farm Bureau members, the landowners whose property has been negatively affected for ten years, we urge you not to adopt a phase-in period as part of these rules.”⁶⁹ That same day, the Board allowed extensive public comment on the proposed chapter 30 rules, and an OFB representative supported several landowners in amplifying the point made in its letter.⁷⁰ Next, after hearing this “adamant oppos[ition]” from his non-state employer, Buchanan worked with the Board’s “rules committee” on March 12, 2014,⁷¹ to strip out the offending phase-in period; and in so doing, the rules committee noted that the provision was struck in response to those comments (championed by the OFB) that alleged “the original language was unfair and would affect the market for selling water and the value of water rights.”⁷² Finally, on March 18, 2014, after being personally involved in shepherding that revision, Buchanan voted during the Board’s regular meeting to approve finalization of the chapter 30 rules as modified.⁷³ This clear set of documented facts helps to illustrate how Buchanan’s role as advocate for the OFB and his role as adjudicator and rulemaker for the OWRB creates an untenable conflict of interest, fundamentally undermining his ability to act with impartiality and independent judgment on matters in which *both* of his masters are interested.

⁶⁵ Oklahoma Water Resources Board, *Meeting Minutes*, (Jan. 21, 2014)
http://www.owrb.ok.gov/news/meetings/board/board_pdf/2014/bdminutes_0114.pdf.

⁶⁶ See *OFB v. OWRB*, and *OFBLF v. OWRB*, *supra* note 29.

⁶⁷ Covington Letter *supra* note 29.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Oklahoma Water Resources Board, *Board Packet*, 2–20 (March 18, 2014)
http://www.owrb.ok.gov/news/meetings/board/board_pdf/2014/bdpacket_0314.pdf. This board packet includes draft copy of official minutes from February 18, 2014, hearing.

⁷¹ Buchanan’s rules committee membership was established in response to a question asked at the March 18, 2014, regular Board meeting by Krystina Phillips, attorney for Citizens for the Protection of the Arbuckle-Simpson Aquifer, see Oklahoma Water Resources Board, *Meeting Minutes*, 10 (March 18, 2014), http://www.owrb.ok.gov/news/meetings/board/board_pdf/2014/bdminutes_0314.pdf. While the response to Phillip’s question is not adequately reflected in the Board’s official written transcription of the meeting minutes, the exchange can be heard on the audio recording, beginning at time stamp 53:24, available for download here: <https://www.dropbox.com/s/egf7bu58cakjg7g/2014.03.18%20OWRB%20Meeting%20Audio%20Transcript.mp3> (confirming Buchanan’s membership on the rules committee and his participation in the work on the chapter 30 rules). The above-linked recording was provided by the OWRB and could, presumably, provide another for authentication purposes if necessary.

⁷² Oklahoma Water Resources Board, *Amendments Recommended by Staff*, 3 n.6 (March 12, 2014), http://www.owrb.ok.gov/news/meetings/board/board_pdf/2014/Ch30_recommended_amendments_3-12-14.pdf.

⁷³ Oklahoma Water Resources Board, *Meeting Minutes*, 8–10 (March 18, 2014), http://www.owrb.ok.gov/news/meetings/board/board_pdf/2014/bdminutes_0314.pdf.

b. Buchanan Performs His OFB and OWRB Duties Contemporaneously.

In addition to the conflicts of interest that arise from Buchanan's dual employment, during OWRB meetings Buchanan is performing his duties as OFB President and as OWRB member contemporaneously. Buchanan's duty as an OWRB member is to participate in rule-making and adjudications of the board to allocate, distribute, and manage water quantity in the state,⁷⁴ and in performing those duties, he is required to make decisions according to certain statutory and regulatory standards. As the President of the OFB, on the other hand, Buchanan has a duty to further the goals and policies of that organization for the benefit of its members. As described above, Buchanan speaks regularly during OWRB meetings advocating for policies that would free up groundwater for sale by private landowners. During these discussions, Buchanan advocates for the OFB's policies, as its President, on behalf of the organization's members while he is ostensibly and simultaneously acting as a State Officer. Buchanan's advocacy for these views during OWRB meetings violates the ethics rules because he is, essentially, being paid by the State during those meetings for acting as an OFB advocate on matters before the agency. Buchanan's own words help to underscore the problem when he declares "I was appointed by Governor Fallin to represent the irrigation and agriculture on the Water Resources Board[, and a]s President of the Oklahoma Farm Bureau I represent agriculture and rural Oklahoma, so I see no conflict of interest in representation."⁷⁵ Buchanan seems to admit that his OFB and State Officer duties are coextensive and concurrent, which demonstrates a clear misapprehension of the ethics rules.

c. Buchanan's Conflicts of Interest and Contemporaneous Performance of OWRB and OFB Duties Mandate Buchanan's Dismissal From the OWRB

The public record, information available even without the Ethics Commission's investigatory powers, demonstrates that Buchanan's dual employment violates the law;⁷⁶ accordingly, he should be removed from his position as a State Officer. His duty to act in the interests of the OFB *so* permeates his participation on the OWRB that is nearly impossible to distinguish where his advocacy of the OFB's policy ends and his "impartial" consideration of state water issues begins. In fact, he has publicly argued that he represents the *same* interests in both his capacities.⁷⁷ The rules, however, are clear: When non-State employment creates an ongoing incentive, financial or otherwise, for a State Officer to make decisions in a way that favors his private employer or himself, then the State Officer is no longer capable of performing the duties he owes the State and the public. And the problem, in this case, is compounded by the *nature* of Buchanan's relationship with the OFB: He is not merely an employee or a member of

⁷⁴ See 82 OKLA. STAT. §§ 1085.1 *et seq.* (statutory authority for creation of the OWRB, description of its duties and powers); see also 82 OKLA. STAT. §§ 105.1 *et seq.* (standards for board allocation of stream water use); 110.1 *et seq.* (board regulation of dams); 277 *et seq.* (board regulation of irrigation districts); 1020.1 *et seq.* (board regulation of groundwater and its allocation).

⁷⁵ See Carter, *Water Official Under Fire: Groups Claim Buchanan's Posts Pose Conflict of Interest*; Carter, *Group Calls for Resignation of Water Board Official, Angus, Buchanan: I have no plans to resign*, *supra* note 36.

⁷⁶ See IO-2002-002 (determining that an agency's general counsel could accept secondary employment with a law firm provided certain conditions were met).

⁷⁷ See Carter, *Water Official Under Fire: Groups Claim Buchanan's Posts Pose Conflict of Interest*; Carter, *Group Calls for Resignation of Water Board Official, Angus, Buchanan: I have no plans to resign*, *supra* note 36.

the organization but is, instead, *its leader and chief executive*. He is not facing a *single* conflict of interest that prevents him from taking part in a single decision; he faces a conflict of interest *every time the OWRB meets to discuss an issue on which his non-State employer has taken a position*, which makes for a long list indeed. The ethics rules do not permit this situation to continue.

B. Buchanan Violated the Representation of Others Rule By Acting as an OFB Official While Performing His Duties as a State Officer.

The Ethics Rules prohibit a State Officer from “represent[ing] another person before the governmental entity the State Officer . . . serves.”⁷⁸ Representation occurs, and thus the rule is violated, by the State Officer making any “written or oral communication with . . . any governmental entity on behalf of a person or organization whether gratuitous or for compensation.”⁷⁹ State Officers are barred from representation because the alternative would be for the State to sanction impropriety or the appearance of impropriety in multiple ways. For example, if the officer represents a friend or employer before the agency on which he serves as a State Officer, it risks giving undue weight to the friend’s or employer’s cause before; it plainly affords the friend or employer a benefit unavailable to other individuals and entities due to the officer’s familiarity with the agency. Additionally, since public participation to state bodies and agencies is limited in time and manner, to allow a State Officer to represent another’s interest *in addition to other time they are allowed to advocate for their position* would give them an unfair advantage over other interests being presented to the state body.

Additionally, this Ethics Rule prohibits Buchanan’s habitual advocacy of the OFB’s water policy before the OWRB which, as discussed above, is contrary to what he believes is his right and due.⁸⁰ Buchanan has acted and spoken as a representative of the OFB during regular OWRB meetings.⁸¹ Like so many of his other activities before the OWRB, Buchanan’s representation of the OFB’s policy infects the OWRB’s decision-making process with his bias. Regardless of the issue before the OWRB, Buchanan is prohibited from representing the interests of anyone before the agency because it is unfair to every other person and entity with an interest in the same matter before the board.

C. Buchanan Violated the Interest-Benefit Rules By Participating, Discussing, Influencing, and Attempting to Influence Official OWRB Actions in Relation to Matters in Which His Non-State Employer Had a Pecuniary and Reasonably Foreseeable Benefit.

Finally, the Ethics Rules prohibit State Officers from participating in discussion, voting, influence of, or attempted influence of official actions of the employing agency in certain

⁷⁸ § 257:20-1-6(d).

⁷⁹ § 257:1-1-2 (defining “representation” and further defining “person” broadly).

⁸⁰ See *supra* notes 61–73, and accompanying text.

⁸¹ E.g. Oklahoma Water Resources Board, *Meeting Minutes*, (July 17, 2012)

http://www.owrb.ok.gov/news/meetings/board/board_pdf/2012/bdminutes_0712.pdf (“Mr. Buchanan stated the Oklahoma Farm Bureau will be working with [Board Executive Director] Mr. Strong and [Board Chief of Financial Assistance Division] Mr. Freeman to better understand the issues and inform their members”).

circumstances.⁸² This participation ban applies when the officer, a member of his immediate family, or associated business “has a pecuniary interest in; or a reasonably foreseeable benefit” from an agency action.⁸³ Whether an entity has a pecuniary interest in or a reasonably foreseeable benefit from an agency action is a fact question.⁸⁴

As to the preliminaries, the participation ban applies to Buchanan whenever the OFB could reasonably receive a foreseeable benefit because the OFB is an “associated entity” with respect to Buchanan because he is an officer and director of the entity.⁸⁵ Where such benefit is implicated, State Officer participation in agency action is precluded by the rules.⁸⁶ Here, the facts demonstrate that Buchanan has participated in, influenced, and attempted to influence official OWRB actions in which the OFB has a direct pecuniary interest and from which it can obtain reasonably foreseeable benefits.⁸⁷

As discussed above, OWRB decisions that would impact water availability directly relate to the OFB’s advocacy and pecuniary interests and reasonably foreseeable benefits accrue to the OFB where the OWRB’s decision results in increased water availability. It is important to note that a reasonably foreseeable benefit that would trigger the Ethics Rules’ prohibition of participation does not have to be immediate or guaranteed, just foreseeable. Also illustrated above, while Buchanan has abstained from *voting* on some matters before the agency, he has continued to participate actively in discussions and influenced OWRB actions. Indeed, Buchanan has publicly stated that his OFB affiliation only requires that he abstain from voting but that he “still ha[s] the opportunity to discuss with the other OWRB members about how [issues] impact[] landowners and agriculture in Oklahoma;” in fact, he called on as many OFB members as possible to get on as many State regulatory boards as possible so better influence State policy and law.⁸⁸ Since Buchanan made those statements, he directly participated in and influenced, for example, the chapter 30 rules promulgation and revisions and other matters relating to the MAY

⁸² § 257:20-1-8(a).

⁸³ *Id.*

⁸⁴ EI-1999-002.

⁸⁵ § 257:1-1-2 (“‘Associated’, when used with reference to an entity, includes an entity in which an individual or a member of his or her immediate family is a director, officer, fiduciary, trustee, agent, or partner, or owns or controls, in the aggregate, at least two percent (2%) or a value of five thousand dollars (\$5,000) of the outstanding equity.”).

⁸⁶ EI-1999-002.

⁸⁷ There is, of course, an exception to this rule: State officers do not have to abstain from participation where the pecuniary interest or benefit is only *incidental* or *does not benefit more than “all other members of the profession, occupation, or large class.”* § 257:20-1-8(b). See generally IO-1997-002, EI-2001-002. But this exception does not apply to Buchanan. For example, if the question were whether an *individual landowner* with a pecuniary interest in his own groundwater rights had to abstain from participation, then the general application of the OWRB’s decisions would likely trigger the exception; however, that is not the case here, where it is the interests of the *OFB* that are relevant to the inquiry, here. The OFB’s pecuniary interest of its insurance business should preclude a finding that it would not benefit any more than other affected entities. Additionally, the scope of comparable professions, occupations, or large classes for the purposes of the exception would be affected by the scope of entities affected by the agency’s action. For example, if the agency in question regulated insurance companies, then the agency’s uniform treatment of all such companies would trigger the exception and an officer affiliated with an insurance company would be allowed to vote on any matter affecting all insurance companies. In this case, however, the water interests at stake affect landowners, environmentalists, tribal governments, municipalities, insurance companies, and many other interest groups. Each of these groups would have to be considered in determining whether the exception applies, and we submit that the exception cannot reasonably be found to apply.

⁸⁸ Showell, *supra* note 31.

determination implementation.⁸⁹ He has also publicly argued that he does not perceive *any* conflict of interest resulting from his role as OFB President and OWRB member, which roles he conflates in terms of some apparently coextensive right to advocate from within a State agency.⁹⁰

CONCLUSION

We believe that Buchanan has violated the Ethics Rules in several ways while serving on the OWRB. He used his OWRB position to campaign for OFB President. He has access to sensitive information solely because of his position on the OWRB—attorney-client privileged information—regarding the its' ongoing litigation with his other employer, the OFB. His dual employment as OWRB member and OFB President creates a continuing and pervasive conflict of interest that completely undermines his ability to perform his duties of impartiality and independent judgment. He has actively and vocally represented the interests of the OFB—an organization with foreseeable pecuniary interest in water availability matters—before the OWRB. And he has refused to abstain from participation in proceedings in which the OFB—an entity associated with Buchanan as its officer—has a reasonably foreseeable and pecuniary interest. It is imperative that the Ethics Commission investigate the propriety of Buchanan's membership on the OWRB. Several interest groups have already voiced their opinion that Buchanan's ongoing conflicts of interest mandate his removal from office. Investigation is warranted, if not absolutely necessary, in this case because of the threat to the public confidence in our State government and the ever-present risk of Buchanan's infectious bias in OWRB matters.

WHEREFORE, complainant and informant requests that the Commission review this complaint or information and investigate the matter within a reasonable time.

May 7, 2014
Date

Charlette Heavner
Complainant's or Informant's Signature

⁸⁹ See *supra* notes 65–73, and accompanying text.

⁹⁰ Angus, *Buchanan: I have no plans to resign*, *supra* note 36.


VERIFICATION

State of Oklahoma)
McCurtain County) ss.

Charlette Hearne, individually and on behalf of Oklahomans for Responsible Water Policy, of lawful age, being first duly sworn, states that he or she is the complainant or informant above named, that he or she has read the foregoing complaint or information and knows the content s thereof , and that the fact s therein set forth are true.

Daytime Phone Numbers: (580) 420-3040 (home) *Charlette Hearne*
(580) 579-7477 (cellular) Charlette Hearne, individually and on behalf of Oklahomans for Responsible Water Policy

Mailing Addresses Charlette Hearne ORWP
400 N Main P O Box 1061
Broken Bow, Ok 74728 Antlers, OK 74523

Subscribed and sworn to before me this 7 day of May, 2014.

Masheli Sargent
Notary Public
My commission expires: Oct. 7, 2017

DELIVER OR MAIL TO: Ethics Commission
B-5 St at e Capitol Oklahoma City, OK 73105
(405) 521-3451

NOTICE TO COMPLAINANTS OR INFORMANTS

ALLEGED VIOLATIONS OF THE ACT [Complaints]:

If you are considering filing a complaint with the Ethics Commission alleging violations of the Political Subdivisions Ethics Act, Section 301–325 of Title 51 of the Oklahoma Statutes [“Act”], you should be aware of the following legal requirements and liabilities:

A complaint alleging a violation of the Act will not be accepted unless it:

- is in writing signed by the person making the complaint ;
- is verified and notarized;
- states the specific section(s) of the Act that the respondent (the person against whom the complaint is lodged) is alleged to have violated; and
- states the date of the alleged violation (which shall not be more than two years before the complaint is filed);

A complaint alleging a violation of the Act must remain confidential; it is unlawful to disclose:

- the contents of a complaint ;
- a person’s intention to file a complaint ;
- the fact that a complaint has been filed; or
- a person’s knowledge of another person’s intention to file a complaint.

A person convicted of disclosing material made confidential under the law shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$10,000.

A respondent may disclose any part of a complaint at any time; however, disclosure by the respondent of any part of the complaint makes all pertinent records open for public inspection.

A person alleging a violation of the Act may be liable for filing a frivolous complaint if:

- he or she has submitted or has caused or conspired with the complainant to submit substantially the same complaint to the Commission within the preceding six months;
- to the best of his or her knowledge, the complaint is not accurate or is not well grounded in fact; or
- the complaint is made for an improper purpose, including harassment of any person named in the complaint.

A person alleging a violation of the Act convicted for filing a frivolous complaint shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$10,000.

Mere receipt of a complaint by the Executive Director or a staff member of the Commission is evidence only of the fact that the technical requirements of the Act have been met. Acceptance of a complaint will not protect a complainant from a frivolous complaint charge. The intent of the complainant may only be determined in an investigation of the facts surrounding the complaint.

ALLEGED VIOLATIONS OF THE RULES [Informations]:

If the Respondent discloses the contents of an information or the fact that an information has been filed against him or her, any provisions of this Chapter prohibiting disclosure of the information by the Commission may be waived and the information and written correspondence between the Respondent and the Commission’s staff or independent contractors may be open for public inspection. [257:30–1–3(f)]