



GENTNER DRUMMOND
ATTORNEY GENERAL

September 21, 2023

Via Hand Delivery and E-mail

Ashley Kemp
Executive Director
Oklahoma Ethics Commission
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Dear Director Kemp:

Today's meeting of the Ethics Commission should be cancelled due to clear violations of the Open Meeting Act which have come to my attention.

My office has had discussions with Commissioner Eddie Fields about the search process for the Commission's next executive director. In light of these discussions and reviewing the July 2023 meeting minutes, the Open Meeting Act was violated in three ways.

First, discussing any qualifications and the search process is not appropriate for executive session. *See* 2006 OK AG 17 (concluding that section 307(B)(1) does not permit a public body to discuss a job opening when no applicant or candidate is discussed). Also, I am informed that robust discussion on topics not appropriate for executive session took place behind closed doors instead of in an open meeting. Neither article 29 of the Oklahoma Constitution nor the Ethics Rules set qualifications for the executive director. Commissioners should have approved requiring candidates for the position of executive director be a licensed attorney in the State of Oklahoma in a publicly, record vote at the very least. Notwithstanding, this manufactured qualification appears aspirational at best, and at worst, arbitrary and capricious.

Second, while the Commission did hold a recorded vote to accept your resignation, the Commission did not take any action concerning the job posting or setting qualifications. Thus, it appears that Commissioners approved the qualifications or job posting in executive session rather than during the open meeting or did not approve the posting and qualifications at all. This essentially allowed the Commission's staff or the search committee, discussed directly below, to set job qualifications rather than the Commissioners themselves.

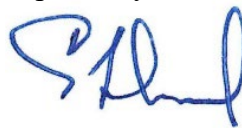
Third, the Commission did not vote to establish the search committee and set its operating parameters. Again, it appears that decisions concerning the search committee's composition and directive were made behind closed doors instead of during an open meeting where the public would benefit from the discussion and understanding of the decision-making process. Merely referencing a search committee upon returning to open session is wholly inadequate. To the extent that the search committee possessed any actual or de facto decision-making authority, which this office understands may have been exercised through the disqualification or narrowing of candidates, meetings of the search committee were required to be open. See *Int'l Ass'n of Firefighters, Local No. 2479 v. Thorpe*, 1981 OK 95, ¶¶ 8-9, 632 P.2d 408 (adopting *Sanders v. Benton*, 1978 OK 53, 579 P.2d 815).

These apparent actions represent serious violations of both the letter and spirit of Oklahoma's Open Meeting Act, the purpose of which is "to encourage and facilitate an informed citizenry's understanding of governmental processes and governmental problems." 25 O.S.2021, § 302. While I currently make no determination of whether any of the described violations were willful, my office reserves the right to make such a determination after a thorough investigation, if necessary.

In closing, it is clear to me that this process has been irreparably flawed and must be started anew. You owe it to Commissioners to navigate them throughout the process legally, and you owe it to the State of Oklahoma to get this process right and completed *transparently*.

Consequently, today's meeting must be canceled, and the search process must start over. My office stands ready and willing to assist the Commission through the completion of a new search to ensure full compliance with the law and promote an open and transparent process in which the public can have confidence.

Respectfully,



GENTNER DRUMMOND
Oklahoma Attorney General

cc: Commissioner Eddie Fields (E-mail only)
Commissioner Howard Johnson, Chair (E-mail only)
Commissioner Jarred Brejcha, Vice Chair (E-mail only)
Commissioner Gregg Engle (E-mail only)
Commissioner Justin Meek (E-mail only)
President Pro Tempore Greg Treat (E-mail only)
Speaker Charles McCall (E-mail only)
Governor J. Kevin Stitt (E-mail only)
Chief Justice M. John Kane IV (E-mail only)