ARIZONA INDEPENDENT REDISTRICTING COMMISSION

Monday, August 15, 2011
8:42 a.m.

Location

Holiday Inn Commerce
777 North Pinal Avenue
Casa Grande, Arizona 85122

Attending

Colleen C. Mathis, Chair
Jose M. Herrera, Vice Chair
Scott Day Freeman, Vice Chair
Linda C. McNulty, Commissioner

Raymond F. Bladine, Executive Director
Kristina Gomez, Deputy Executive Director
Buck Forst, Information Technology Specialist
Mary O'Grady, Counsel, Osborn Maledon
Joe Kanefield, Counsel, Ballard Spahr
Jean-Jacques Cabou, Osborn Maledon

PREPARED BY:

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Certified Reporter
CR No. 50637
CHAIRPERSON MATHIS: This meeting of the Arizona Independent Redistricting Commission will now come to order.

The time is 8:42 and today is Monday, August 15th.

Let's please rise for the Pledge of Allegiance.

(Pledge was recited.)

CHAIRPERSON MATHIS: We'll go ahead and start with roll call.

Vice Chair Herrera?

VICE CHAIR HERRERA: Here.

CHAIRPERSON MATHIS: Vice Chair Freeman.

VICE CHAIR FREEMAN: Here.

CHAIRPERSON MATHIS: Commissioner McNulty.

COMMISSIONER McNULTY: Here.

CHAIRPERSON MATHIS: Commissioner Stertz.

COMMISSIONER STERTZ: (No response.)

CHAIRPERSON MATHIS: We have a quorum.

Unfortunately, Mr. Stertz couldn't be with us today but he will be receiving this
information at a later time separately.

So our first item on the agenda is call
to order. We've done that.

Second item, report legal advice and
direction to counsel regarding Attorney General
inquiry. The Commission may vote to go into
executive session, which will not be open to the
public for the purpose of obtaining legal advice.

Our legal counsel today, we have Joe
Kanefield and Mary O'Grady. And would you two --
would one of you like to give us an update on the
Attorney General investigation?

MARY O'GRADY: Sure, Madame Chair.

What I would like to do is give a brief
update and then recommend that we move into
executive session not for just item II, but because
the items are so interrelated, perhaps go into
executive session for the other items on which we
are permitted to give legal advice.

CHAIRPERSON MATHIS: Okay.

MARY O'GRADY: And let me see.

As everyone knows, the Attorney General
announced an inquiry into procurement and open
meeting law matters relating to the mapping
consultant procurement a little more than three
weeks ago. That was Thursday, July 21st, which, as you all remember also was the first day of our public hearings that just ended last -- a week ago Saturday.

We have since then been in communication with the Assistant Attorney General that was assigned to the matter in an effort to work cooperatively and get matters resolved. We have a copy of an executive session transcript that they requested and so we've been trying to work through those issues.

They've also requested interviews of all five commissioners and we wanted the opportunity to fully brief the commissioners on that request as well as the AG inquiry as a whole.

They also -- we had requested -- because of the -- let me see. The initial press release announcing the inquiry referred to reports of concerns, so we did ask for copies of any reports that prompted the inquiry.

There wasn't a specific written open meeting law complaint, as is often the case, so we asked for copies of the reports. We did receive those.

And then also after receiving those, we
received last week investigative demands that
would -- asked for interviews of all commissioners
and for documents from all commissioners. And we
received those last Thursday.

And that's the current status of what's
going on with the investigation. And beyond that,
my recommendation would be that we go into executive
session for legal advice and direction to counsel.

CHAIRPERSON MATHIS: Okay. Did anyone
have any questions this time or comments?

COMMISSIONER MCNULTY: I do have one
question.

UNIDENTIFIED SPEAKER: Excuse me, could
you turn that up so we can hear you?

COMMISSIONER MCNULTY: Thank you.

My battery is dead.

Thank you.

The report -- Mrs. O'Grady, I have a
question about the reports that you received.
Are those public?

MARY O'GRADY: We received them through a
public records request. So those would be public
record.

COMMISSIONER MCNULTY: Okay. And they
consisted of yellow sheet reports and some e-mails.
MARY O'GRADY: Yes, they had yellow sheet reports and some e-mails from citizens. And it was largely comments that were similar to what's been in the public com- -- some of the public comment, primarily concern about conflicts of interest, allegations related to the chair, which have been discussed previously in open session.

There wasn't a specific -- the only references to the open meeting law, and I found three, there was a reference in a yellow sheet to placing -- that we would be providing open meeting law training on a future agenda.

There was a reference as to how the Commission had spent a lot of time in executive session during the procurement process, and then there was a general reference to allegations of open meeting law violations, but nothing specific, just a general statement.

But the rest was mostly alleging conflicts of interest and then expressing concern about the -- Strategic's work for Democrats in the past.

COMMISSIONER MCNULTY: And these were e-mails that expressed concerns that are similar to the sorts of things we have heard in our public
meetings?

MARY O'GRADY: That's right.

COMMISSIONER MCNULTY: Thank you.

CHAIRPERSON MATHIS: Any other comments from commissioners?

VICE CHAIR FREEMAN: Madame Chair.

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Just for clarity's sake, the purpose of the E session will be for the Commission to get specific legal advice, that is, facts applied to the law on the subjects of agenda items II, III, IV, and V. So it's a question-and-answer session; commissioners to lawyers and no action will be taken in the E session, correct?

MARY O'GRADY: Madame Chair, Commissioner Freeman, we also have on -- no action will be taken, but I have one clarification to that.

In addition to legal advice, which is noticed for item II and item III, there is the opportunity to give direction to counsel in E session under the executive session that's noticed for paragraph four.

And so they can provide that direction to counsel in executive session. So that does permit
discussion under that provision. So it's not just legal advice. There is discussion and direction to counsel.

VICE CHAIR FREEMAN: Thank you.

CHAIRPERSON MATHIS: Any other questions?

Okay. Do I hear a motion to go into executive session for the purpose of obtaining legal advice and to cover agenda items II, III, IV, and V and we'll also be discussing and possibly giving some direction to counsel.

VICE CHAIR HERRERA: I make that motion.

CHAIRPERSON MATHIS: Okay.

Is there a second?

COMMISSIONER MCNULTY: Second.

CHAIRPERSON MATHIS: All in favor?

("Aye.")

CHAIRPERSON MATHIS: Any opposed?

(No oral response.)

Okay. Hearing none, we will go into executive session.

The time is now 8:50, and, unfortunately, I think we have to do that in this room. There is no private room that we can go into. So I'm afraid we'll have to ask the public to step out during this time. I apologize for the inconvenience.
(Whereupon the public session recessed and executive session ensued.)

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(Whereupon the public session resumes.)

CHAIRPERSON MATHIS: Okay. This meeting of the Arizona Independent Redistricting Commission will now enter back into public session.

The time is 11:04 a.m.

Thank you to members of the public for being patient with us while we were in executive session to discuss the agenda items II through V on our agenda today.

Do I hear a motion to -- with regard to agenda item V, discussion, legal advice and possible action approving expenditures for counsel.

VICE CHAIR HERRERA: I will make that motion, if that's okay. In the spirit of cooperation with the AG's office, I would move that we -- that counsel proceed as directed in the executive session. Is that the --

CHAIRPERSON MATHIS: This is with regard to approving expenditures for counsel to provide legal services in connection --
VICE CHAIR HERRERA: It's -- I'm sorry, Linda. It's the -- were you going to make that motion?

COMMISSIONER MCNULTY: I'll make a motion, although it may not be necessary and you may not be able to hear me -- although it may not be necessary and may not be applicable, in an abundance of caution, I would move that we authorize payment of attorney's fees for representation of the Commission pursuant to A.R.S. 38-431.07(B).

CHAIRPERSON MATHIS: Is there a second?

VICE CHAIR HERRERA: I second that.

CHAIRPERSON MATHIS: Any discussion?

VICE CHAIR FREEMAN: Madame Chair.

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: I can't support the motion as it was made because it just seems to be sort of carte blanche authority that the Commission is potentially granting to approving expenditure for counsel under the statute.

If the motion was limited, and I understand the caveats and reservations made in the motion, but if it was limited to the circumstances that the Commission is facing now, which is a preliminary investigation by the AG and strictly to
that with no enforcement action having been filed, I
could support it. But as the motion is made, I
cannot support it.

COMMISSIONER MCNULTY: I would amend the
motion to say that it's made in connection with the
investigation by the Attorney General -- the
current investigation by the Attorney General.

CHAIRPERSON MATHIS: Okay. Is there a
second for the amended motion?

VICE CHAIR HERRERA: I'll second that,
but I would make a comment. When we hired our
attorneys, we hired them to represent us as
commissioners, not as individuals. So anything --
any legal proceeding regarding the Commission,
Commission work, they will be representing us.

So I think this motion is redundant and
unnecessary. So changing the motion really I guess
I'm not understanding, but I'll go ahead and second
the motion even though, again, I think it's
unnecessary.

CHAIRPERSON MATHIS: Any other
discussion?

COMMISSIONER MCNULTY: Only that the
statute applies to legal action. And so I think --
my understanding is that the very prestigious group
of lawyers that are sitting in front of me right now are authorized to represent the Arizona Independent Redistricting Commission. But out of an abundance of caution and even though the statute may not apply to us, there is a statute that deals with payment of attorneys' fees in connection with a legal action commenced under the open meeting law, which has not occurred. But if it were to occur, my motion would be to authorize these attorneys to represent us in connection with that legal action pursuant to A.R.S. 38-431.07(B).

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Madame Chair, and my position will be that if there is legal action instituted by the AG's office, then the Commission needs to revisit this issue. Right now we're pretty much making the decision going forward as to any legal action that the Commission may face, and I just don't think it's appropriate to make the motion to craft it that broadly at this time.

MARY O'GRADY: Madame Chair, just for -- I don't have a mic.

Just to understand, the language of the statute only applies to legal actions that are commenced under the open meeting law. And as
Commissioner Herrera indicated, our contract covered open meeting law issues for the Commission. I just want to make sure I understand the limitation. And that's why it probably doesn't apply at all to the AG inquiry, because there's not a legal action that's been commenced, there's this preliminary inquiry.

So I'm not sure I fully understand the difference between the motion that Commission McNulty has made and Commissioner Freeman's limitation. I just want to make sure I understand.

VICE CHAIR FREEMAN: Well, I'll do the best I can explaining it, but perhaps for purposes of this preliminary inquiry which concerns alleged violation of open meeting law and procurement violations, if this motion were limited to authorizing counsel, whether it's required -- authorization is required or not, I could support it, but if there's a subsequent action filed against the Commission, I don't know what that action -- legal action might entail, what issues might entailed in that investigation or legal action.

The scope of it -- it makes a big difference and it could entail a substantial expenditure by this Commission. And I'm just
thinking hypothetically, you know, who knows what
could come down the pike. And I have no
foreknowledge of that, but I think it would be
appropriate at that time for the Commission to
discuss that, perhaps get budgets, understand the
scope of any subsequent -- my concern right now is
we are going forward prospectively carte blanche,
the lawyers are going to be authorized to represent
the counsel on any subsequent legal action.

Does that --

VICE CHAIR HERRERA: Madame Chair,
Commissioner Freeman, but you are comfortable with
us doing the representation that's necessary, the AG
inquiry, and if there is any legal action related to
the AG inquiry that we are describing now that's
referenced in agenda item II. So the motion is as
to legal fees in relation to the inquiry and any
litigation that may be commenced in regard to agenda
item II?

VICE CHAIR FREEMAN: I guess there's an
issue as to what the nature and the scope of the
inquiry is, and I don't know if I fully understand.
And I suppose that could change, which is why if
legal action was subsequently commenced, I think it
would be more appropriate for the Commission to
address this issue at that time.

COMMISSIONER MCNULTY: I appreciate Mr. Freeman's comments; however, that's not my motion. If we need to read the motion back in order to be clear about what it was, we can do that. But I just want to be clear -- I believe that the motion was clear that it would be legal fees in connection with any legal action commenced pertaining to the Attorney General's Office investigation.

VICE CHAIR HERRERA: I agree with that.

One quick comment.

If Commissioner Freeman has his own motion, can he make his own motion if you don't agree with Commissioner McNulty's motion? Because I'm assuming what she said is what you want. But if not, I would like you to make your own motion.

VICE CHAIR FREEMAN: This is the discussion on the motion that's before the Commission right now.

MARY O'GRADY: And Madame Chair, you can vote on the motion. There's been discussion and you can vote on the motion on the table.

CHAIRPERSON MATHIS: Should we have the motion read back, though, by the court reporter? Is that possible?
COMMISSIONER MCNULTY: At this point I think I may have restated it three times so she may have a little trouble finding it.

I would call the question, Madame Chair.

I would call the question for vote of the motion.

CHAIRPERSON MATHIS: Well, we have a seconded amended motion, I believe, is what that was.

VICE CHAIR HERRERA: The amended motion.

COMMISSIONER MCNULTY: My amended motion was -- I'll restate it one more time because I understand what it is that I believe I'm trying to accomplish.

Although it may not be necessary and it may not be applicable to this body in an abundance of caution, I move that we authorize payment of attorney's fees for representation of the Commission by our attorneys in connection with any legal action filed in connection with the current Attorney General investigation pursuant to A.R.S. 38-431.07(B).

VICE CHAIR HERRERA: I seconded that.

CHAIRPERSON MATHIS: Okay. Any other discussion?

All in favor?
"Aye."

CHAIRPERSON MATHIS: Any opposed?

VICE CHAIR FREEMAN: Nay.

CHAIRPERSON MATHIS: Okay. So we have --

and I am voting "aye," so we have three "ayes."

It's Herrera, Mathis, McNulty.

Freedom is voting no.

VICE CHAIR HERRERA: Madame Chair.

CHAIRPERSON MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: I was -- just out of curiosity what -- for Commissioner Freeman, what motion could have McNulty made that would have -- that you would have supported? I'm confused because I think she amended it to reflect your concerns, which I disagreed with, but I respect that. So I'm baffled.

VICE CHAIR FREEMAN: I was just going to say, Madame Chair, when you run the hearings.

CHAIRPERSON MATHIS: Did you have a comment, Ms. O'Grady?

MARY O'GRADY: Oh, Madame Chair, certainly Commissioner Freeman can respond if he would like to, but also the vote has been taken and you can go on to the next issue.

CHAIRPERSON MATHIS: So is there a
motion -- do I hear a motion to authorize counsel to proceed as we had discussed during executive session?

VICE CHAIR HERRERA: I make that motion.

COMMISSIONER McNULTY: I second that motion.

CHAIRPERSON MATHIS: Any discussions?

VICE CHAIR FREEMAN: Madame Chair.

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: I just want to make it clear that -- I mean, the Commission had pretty extensive and wide-ranging discussion with counsel. I can't, of course, discuss that and there was certain recommendations made.

I can support the Commission going forward on this motion with the understanding that we're endorsing the recommendations that constitute the entire body of that discussion and that the Commission is working to have a follow-up hearing perhaps on Wednesday, perhaps on Thursday, it's going to depend on logistics, to have follow-up on this issue, the Commission vis-a-vis the AG's investigation. So that having been said, I could support the motion.

CHAIRPERSON MATHIS: Any other
discussion?

All in favor?

("Aye.")

COMMISSIONER HERRERA: Any opposed?

(No oral response.)

Okay. The motion carries unanimously.

To follow up on Mr. Freeman's point, yes, we will be -- this will be an agenda item that we are going to either be discussing on Wednesday or Thursday of this week. We are planning on meeting at this point on both days. So Mr. Bladine, our Executive Director, will be working hard to get that noticed.

And is there any other comments from the commissioners?

Oh, I would like to introduce Jay Cabou. He is with Osborn Maledon and works with Mary O’Grady and is advising us on this particular matter. So thank you, Jay, for your help and being with us today.

JEAN-JACQUES CABOU: My pleasure. Look forward to working with all of you. Thank you Madame Chair, members of the Commission.

COMMISSIONER MCNULTY: I would just like to thank all three of you. I know this is -- this
is complex material and involves a lot of hard
thinking and we appreciate it. And we're glad you
are here.

CHAIRPERSON MATHIS: I echo that. Thank
you.

VICE CHAIR HERRERA: Same here. We
couldn't have hired two better attorneys. And
adding Jay to the mix, be able to work with issues
that come up, whether it be the AG's office or
anybody else, I think we have two very competent
attorneys that are very willing to cooperate and
help out and make things easier for not only us, but
also the AG's Office.

So thank you so much for your help and
your time.

CHAIRPERSON MATHIS: Any other thoughts,
comments?

Okay. That takes us to agenda item VI,
which is you adjournment. So I declare this meeting
adjourned.

The time is 11:18.

Thank you all.

(The meeting concluded at 11:18 a.m.)
I, MICHELLE D. ELAM, Certified Reporter No. 50637 for the State of Arizona, do hereby certify that the foregoing 128 printed pages constitute a full, true, and accurate transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

WITNESS my hand this 23rd day of August, 2011.

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MICHELLE D. ELAM
Certified Reporter
Certificate No. 50637