THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona
December 14, 2017
9:30 a.m.

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CHAIRMAN TITLA: Opposed?

(Chorus of ayes.)

All in favor say aye.

November 16, 2017, and a second by Commissioner Chan.

Commissioner Kimble to approve the minutes of

CHAIRMAN TITLA: Okay. There's a motion by

COMMISSIONER CHAN: I second the motion.

CHAIRMAN TITLA: Okay. There's a second

Commissioner Kimble to approve the minutes of

November 16, 2017, and a second by Commissioner Chan.

All in favor say aye.

(Chorus of ayes.)

CHAIRMAN TITLA: Opposed?
We have reached out to areas of Kingman in nationalities and all cultures. The reason to flag this for you is really threefold. First, it's to make clear to folks that might otherwise -- might say otherwise that this is not a Clean Elections initiative, the Clean Elections Commission does not endorse this initiative. I can't imagine the Commission as a body will endorse the initiative. Your individual rights are different, and if you have questions about that, please feel free to see me.

Secondly -- but I don't want you to get confronted or -- by folks who are upset about this and not know that it exists because that's happened before. Second, I want to flag this because as we go into the legislative session, these kinds of initiatives, whether they get off the ground in a real way or not, tend to give folks who don't like Clean Elections a reason or a framing for which they will sponsor their usually misleading repeal efforts. So that's important to be aware of.

And then the third thing -- and this is way down the road, but just to put it in your mind now so that I can point to the minutes later and tell you I said this that, you know, if this were to get litigated.

There's always a remote possibility that it will involve people saying things about the Commission or the Clean Elections Act that may or may not require some type of amicus or clarification by the Commission in that case. That's never happened before, but we've had to consider that possibility with past initiatives. So it's just those are the three things I want you to be aware of.

Unless you have any questions about that, that completes my report.

CHAIRMAN TITLA: Any questions by the Commission?

(No response.)

CHAIRMAN TITLA: If not, Mr. Collins, I just want to commend you for the good work you have been doing for the Citizens Clean Elections Commission. You have been a -- you are an expert in this area of the law and also the attorneys and the staff that have been working for us these past few years. And I really appreciate all the updates that you have given. I think that you and the staff have implemented a focus on reaching out to the four corners of the state so that we can reach all -- all people of all nationalities and all cultures. We have reached out to areas of Kingman in the northwest all the way up to the four corners, Window Rock in the northeast, down to Douglas, Arizona in the southeast, the southwest to Yuma, Arizona. And you guys have done a good job, and I wanted to commend you for that, for your leadership. In the Apache way we have a thing called servant leadership. The leaders in Apache are supposed to serve the people and not to accumulate the wealth for themselves but to give and get things but for the good of the people is what they do in the Apache way.

So I'd like to ask you to continue that good work in the future years so that we can begin to remember and focus and implement the will of the people.

The people passed the Clean Elections system because they wanted to improve the integrity of the Arizona state government by diminishing the influence of special interest money that will encourage citizen participation in the political process and also to promote freedom of speech. I didn't memorize that.

I'm reading it from the back there. So -- under the U.S. and Arizona Constitution. So, Commissioners, my fellow commissioners, I'd like to ask you to remember that as you go forward, that we need to remember the people's will and try to implement it.
Item V: Discussion and possible action on the Commission next year. So thank you.

Chairman Meyer will be the next chairman. Neither do I. The motion is passed. So

Chairman Titla. Meyer.

I would recommend that Commissioner Meyer become the next chairman of the Clean Elections Commission. My last meeting -- official meeting as chairman, as a member of the Commission.

So do we need a motion on that?

MR. COLLINS: Yes, sir.

CHAIRMAN TITLA: A second by Commissioner Kimble.


CHAIRMAN TITLA: Okay. Commissioner Meyer.

I am presenting our 2018 proposed budget this morning. Good morning, Chairman, commissioners. So I believe that you all received the memo which pretty much details everything that was in the spreadsheets, and I have a brief PowerPoint to go over at this time. And I'm happy to take any questions as we go through this.

So, first, we'll talk a little bit about our revenues into the Fund, so actually what gets deposited into our Clean Elections Fund. That is the first thing that we will discuss.

10 percent surcharge on all civil and criminal penalties and fines in the state. So those are transferred from the state treasurer's office and processed by them into our Clean Elections Fund. And we also have our Commission assessments. So anything from enforcement matters is also deposited into the Clean Elections Fund.

All $5 qualifying contributions that our participating candidates collect, so we only receive those in election years. So for 2017, we did not receive any $5 qualifying contributions, but next year we will. And then we do have some miscellaneous items that are deposited into the Fund. These would be rare contributions that we receive. We occasionally do receive some of those. Candidates who pay for the use of prior assets, those are deposited into the fund. Of prior assets, those are deposited into the Fund.

Return of Clean Elections funding, all of that stuff is considered miscellaneous.

Things that we used to receive but we no longer do receive are the $5 tax donations from the state income tax filings. There was a $5 checkoff box. Last year we received $135 worth of those. So I still have it up here because we do receive any $5 qualifying contributions, but next year we will.

So, first, we'll talk a little bit about our revenues into the Fund, so actually what gets deposited into our Clean Elections Fund. That is the
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1. We no longer receive the dollar-for-dollar tax credit into the Fund.
2. So a little history here on what we believe, audit the inflows of our revenues into the Fund look like, and we do pay close attention to this. Tom and I talk about this internally in the office. You can see back in 2010, we were receiving about $20 million into the Clean Elections Fund annually. We are now receiving $7 million. So that's a big change. In 2010 photo radar went away so that -- we lost about $6 million a year when photo radar went away. And then again in 2012, we had a large drop, and that was when the $5 tax checkoff box and our dollar-for-dollar tax donations went away. We lost about another 5- to $6 million a year.

3. The decline that we see now between 2013 and today is roughly about a million dollars. So in 2014, we received about $8.4 million. This year, as soon as we receive December's revenues, I would anticipate that we're probably just barely going to receive over $7 million into the Fund. So we don't know why there's about a million dollar decrease in civil and criminal penalties annually, but there is. So it is something that is of concern with our revenues dropping so drastically, and these are the only funds that we receive. We are not appropriated. We receive no money from the general fund. So we do have to pay close attention to these as we anticipate our expenditures in election years and non-election years.

This is a chart to kind of show you what our monthly revenues look like over the years. There is no rhyme or reason to what we receive into the Fund in any given month. For some reason, in April and May we receive a little bit more, but I don't know why that is. We don't have any data on that, but our monthly revenues are pretty much -- they're not entirely consistent, but on average, we receive about 600 and -- $626,000 into the Fund, on average. So --

COMMISSIONER CHAN: That's when all the drunk drivers are paying off their fines from the holidays in previous years.

MS. LARSEN: Chairman, Commissioner Chan, I don't know, but possibly. You know, I mean, it's after the Open and Barrett Jackson. So we don't know.

MR. COLLINS: Can I -- if I could, Sara,

Mr. Chairman, one other thing, I think we -- you know, we talked about this in some other context, and I think over the next year or so we're going to have to take a hard look at A, for example, you know, the Auditor General audits both our revenues -- or our ex-flows, as we saw last month. They, we believe, audit the inflows --

1. As well. We'd like to kind of look at this in light of that and then look at other -- other places where there are revenue issues based on some other discussions.
2. You know, there's also -- always been the open question of whether or not the repeal of the $5 and the dollar-for-dollar tax credit was Voter Protection Act-compliant given the fact that it, you know, reduced our revenues, and how that advances the purpose of the Clean Elections Act is really mysterious to me. But -- so we are going to -- I think we're going to keep track of that over the next year and try to see what other places we need to look to see what -- well, I don't mean to interrupt you, but I just want to say that it's something that's on -- when Sara and I are talking about it, this is something that's on our agenda to try to get as good a picture of what's going on as we can over the next year.

MS. LARSEN: Chairman, commissioners, so after this very bleak opening, I should reassure you that at this time, we are going into 2018 with about $28 million in our fund. So, you know, it's not $72 million is all we have, but that's all that's going to be deposited into the Fund for this year.

So by statute the Commission does need to project the amount of revenues that the Fund is going to collect for the next four years. So I have made those projections based on historical data, and I would -- I'm not changing my projections from 2018, except for the 5 -- or from 2017, except for the $5 qualifying contributions.

I think that we'll actually have a little bit less than I had anticipated when I did the budget presentation last year, but I'm anticipating that we --

you know, given what we received this year and what we received in 2016, I'm fairly confident that we will receive at least $7 million in civil and criminal penalties, at least in 2018 and hopefully going forward, but that number will not continue to drop.

And then again in 2012, we went away so that -- we lost about $6 million a year. So it is something that is on -- when Sara and I are talking about it, this is something that's on our agenda to try to get as good a picture of what's going on as we can over the next year.

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1. from the courts how much is being waived from the Clean Elections Fund, so we can't actually say how much we would receive if that went -- if that went away.
2. COMMISSIONER PATON: So you are being conservative is basically what I'm asking.
4. And then Commission assessments always increase during our election years. So in 2018, I would anticipate that we'll probably have $15,000 in assessments, and this is what we had in 2016. $5 qualifying contributions -- well, let me back up.
5. The $5 tax donations, I would be shocked if we received any this year. I always make a zero dollar projection on that and, again, we've received $135 this year. So I would really be shocked if anybody is filing back tax returns from six years ago.
6. The $5 qualifying contributions, because it is a gubernatorial election year, we have more candidates running. So we anticipate collecting more in 2018 than we do in 2020. And then miscellaneous, again, rare contributions that people actually do give to the Fund, prior assets, just miscellaneous donations that we receive, and about $15,000 we anticipate receiving.

1. So these are the revenue projections. We do have that laid out in the memo as well.
2. COMMISSIONER CHAN: Mr. Chairman, Sara, on the memo -- in the memo that you provided -- and I know you're kind of going over more detailed projections here, but I was just concerned, if I'm understanding it correctly, that we'd be operating at a $13 million deficit every year for the next four years or over a $13 million deficit?
3. MS. LARSEN: No, and I'll -- that will be on some later --
4. COMMISSIONER CHAN: Okay. Thank you.
5. MS. LARSEN: Chairman, Commissioner Chan, that will be on some later slides when I talk about excess revenue projections or excess amounts into the Clean Elections Fund.
6. COMMISSIONER CHAN: Okay. Thank you.
7. MS. LARSEN: So -- yes.
8. So we also -- every year we calculate our expenditure cap, and we do this by -- we contact the Department of Revenue and we see how many people have filed individual income tax returns in the state. So we're up about 50,000 filers this year. So we're almost -- we're getting close. So hopefully next year we'll see about three million filers, but -- so we...
1 candidates, and that's broken out for the primary
2 election and the general election as -- based on our
3 historical data of how many candidates actually qualify
4 for funding.
5 So a little bit of an overview of our
6 projected expenditures for 2018, they will come to a
7 total of $17,557,340. This is about 85 percent of our
8 spending cap. I don't believe that, you know, we will
9 spend all of that, but this is for everything that we
10 have projected and have quoted for 2018 for an election
11 year.
12 Okay. So now I have a few slides, and
13 sometimes these can be a little confusing. So please
14 stop me if you need clarification on anything.
15 This is a review of what our actual
16 expenditures have been as compared to what our
17 expenditure cap was, so our overall cap that we are
18 allowed to spend and the amount that we actually spent
19 in those years. As you can see, in 2014 and 2016, we
20 spent more money than we did in 2015 and 2017. That's
21 also because those are election years, and we have
22 larger expenses such as candidate funding and our Voter
23 Education Guide. We still have not spent at the cap in
24 those years, but -- but that was our capacity to spend
25 and then that's how much we actually spent.

So our revenue projections versus our
1 expenditure cap. So this is just to show you that $13
2 million difference in our spending capacity which is at
3 $20 million and then our revenues that we actually
4 bring in that are at about $7 million. So this is why
5 we can't spend at our -- at our capacity, even though
6 we can per the statute spend that much, but because of
7 our revenues we do need to be more conservative.
8 MR. COLLINS: Mr. Chairman, commissioners,
9 again, this goes to the whole point of my -- the sort
10 of open question about the Voter Protection Act in the
11 sense that, you know, we have capacity that's been set
12 forth in the statute by the voters and then the
13 legislation, by virtue of eliminating funding sources,
14 has -- has essentially decimated our ability to spend
15 money up to the amount of money that voters intended us
16 to have available to do their -- the work that voters
17 intended us to do.
18 So, you know, if you look at these two
19 things together, the decimation of our funding sources
20 and the authorization -- the expenditure limitations,
21 you begin -- you begin to sort of wonder, well, how is
22 that possible?
23 MS. LARSEN: Okay. So, Chairman,
24 commissioners, again, we have our projected
25 expenditures versus what our cap expenditures are, and
26 this is for the next four years because these also need
27 to be projected.
28 So in 2018, we do project that we will
29 spend about $17.5 million. Our cap is a little over 20
30 million. In 2019, it's a non-election year, so we will
31 spend a fraction of what we do in an election year.
32 2020 is an election year, but we do not have all
33 statewide offices up. So we will not spend nearly the
34 amount that we do in a gubernatorial election year.
35 And then 2021, again, is a non-election year. So we
36 will not spend at the capacity of the cap.

COMMISSIONER MEYER: Mr. Chairman?
CHAIRMAN TITLA: Commissioner Meyer.
COMMISSIONER MEYER: Sara, how does the
2018 projection and expenses compare to the 2014 -- the
last gubernatorial, if you know?
MS. LARSEN: I do, Commissioner.
CHAIRMAN TITLA: Commissioner Meyer. So on the first page of your spreadsheet on the
right-hand side -- or I'm sorry -- on the left-hand
side, you will see the 2014 figures. And so we --
COMMISSIONER MEYER: Just under 12 million?
MS. LARSEN: Yeah, yeah, just under 12
24 million, so -- but I can tell you in that year we
probably projected that we would spend about $19

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10:02:40-10:04:05
1. all candidates, it will probably be about $400,000.
2. Translation services, our court reporter, things of
3. that nature, those are all professional outside
4. services.
5. COMMISSIONER MEYER: Thank you.
6. COMMISSIONER KIMBLE: Mr. Chairman?
7. CHAIRMAN TITLA: Commissioner Kimble.
8. COMMISSIONER KIMBLE: Following up on
9. Commissioner Meyer's question on the other professional
10. services, so this is substantially higher than any of
11. the previous years here, 2014 or forward. And so is
12. most of this because we're going to be auditing
13. everyone?
14. MS. LARSEN: Chairman, Commissioner Kimble,
15. no, it's actually not. Gina in the voter education
16. capacity actually will have more assistance in crafting
17. the Voter Education Guide with an outside vendor, and
18. about $1.5 million is coming from that. And they're
19. going to assist with voter education debates and the
20. Voter Education Guide, and I know that she'll have her
21. presentation in January as to what is going to her
22. voter education plan.
23. COMMISSIONER CHAN: To that point -- I'm
24. sorry, Commissioner Kimble, but is part of that --
25. didn't we lose kind of the package deal that we used to

10:04:07-10:05:15
1. have with the Secretary of State that saved us a little
2. money?
3. MS. LARSEN: Chairman Titla, Commissioner
4. Chan, I think you're actually referring to the printing
5. of the candidate statement pamphlet.
6. COMMISSIONER CHAN: Yes.
7. MS. LARSEN: I don't know the technical
8. contractual aspects of that.
10. MS. LARSEN: So our quote for our candidate
11. statement pamphlet is essentially the same. We're
12. anticipating it will probably be the same, maybe a
13. little bit higher, but over the years we've actually
14. reduced the cost by internally going to district
15. pamphlets. We've actually saved about a million
16. dollars by going to district-specific pamphlets.
17. COMMISSIONER KIMBLE: Mr. Chairman, going
18. back to what I was -- what I was asking about, so I
19. don't want to get too much into this, but are you
20. saying that we're getting outside assistance for
21. something that was done in house or -- because I'm
22. looking at this 2.62 million versus, in 2014, 655,000.
23. So it's four times that.
24. MS. LARSEN: Correct. So -- yeah. So this
25. is an outside vendor, and if you would like to know the

10:05:18-10:06:30
1. details of that, I can have Gina speak to that because
2. that is a quote that she received, but yeah. This is
3. for -- it's not necessarily something that was done
4. internally before, but I can let Gina speak to that.
5. CHAIRMAN TITLA: Gina.
6. MS. ROBERTS: Mr. Chairman, commissioners,
7. so what we have done beginning in 2016 -- so, you know,
8. prior to 2014 we didn't do this, but in 2016 for the
9. first time we did a request for additional funding
10. outside of the paid media cap which has usually been
11. what the amount was reserved for our public and voter
12. education plan.
13. In 2016, we made the additional request of
14. a similar dollar amount, between 1 and 1.5 million, and
15. this was pertaining to educating the public regarding
16. the Voter Education Guide and the debates, not the
17. actual production of it. So Sara referenced numbers,
18. the professional and outside services for the actual
19. production of those, but now we're adding additional
20. funding to educate the public about the existence of
21. those, how to use these, when the debates will occur,
22. how to attend, that type of thing.
23. And so because it's pertaining to the Voter
24. Education Guide and the debates, it falls outside of
25. that paid media cap. So that is additional funding.

10:06:32-10:07:40
1. We -- we first made the request in 2016, and the reason
2. why we did that was based off of our research. When we
3. held our focus groups, when we did pre and post
4. election research with our voters, we saw a very
5. important need to educate the state about the existence
6. of these tools for them because our debate attendance
7. is low.
8. The amount of viewer -- you know, viewers
9. that we get from the recorded sessions, we wanted to
10. see those increase so people can actually make use of
11. these tools, more of that information that these exist.
12. And with the Voter Education Guide, the production cost
13. of it, we were able to implement some cost savings on
14. that side when we went district specific, but again, it
15. was more of we don't want these guides to make it into
16. the mailbox and then folks get them and then, in turn,
17. put them into the recycle bin. We want them to
18. actually use it.
19. So it was more of an education plan to show
20. our voters this guide is coming to you. Expect it
21. before you get your ballot, and this is how you use it.
22. This is the information that's important in there. So
23. we did that in 2016. We continue to do our voter
24. research to understand do folks realize what these
25. tools are? How to use them? And we're still seeing a
1. need for that.
2. So we made the additional request in
3. this -- in this budget plan. So it's additional
4. funding to help us educate the state specifically about
5. the debates and the Voter Education Guide that these
6. tools are available to voters and how to use them, not
7. so much the production of those items.
8. MR. COLLINS: Mr. Chairman, Commissioner
9. Kimble, if I may just to amplify what Gina said, I
10. think the comparison number is 2016, first of all, and
11. I think -- and I think -- I think I'm not wrong.
12. And then, second of all, I think that the
13. important thing to bear in mind is that when 16-949 was
14. amended, it expressly stated that if the Commission
15. determined that there was reasonable and necessary
16. expenditures necessary under 16-956, which is where the
17. debates and the -- and the candidate statement pamphlet
18. are authorized, that those would be not subject to any
19. cap. It's expressly in the language of the statute.
20. And so given that we have done the research
21. over the course of two election cycles now -- Gina has
22. managed that -- we don't think that this request is
23. unnecessary. In fact, we think it's reasonable and
24. necessary because the fact of the matter is, for
25. example -- and you'll see this next month in our over

10:09:07-10:09:24

1. preview, but we're working to revamp the Voter
2. Education Guide so that it is a better tool than it's
3. been in the past as a printed -- as a printed matter.
4. I mean, all of those things cost dollars.
5. The legislature in amending 16-949 expressly authorized
6. the Commission to make that determination if it's
7. reasonable and necessary, and staff believes it is
8. reasonable and necessary.
9. COMMISSIONER KIMBLE: Okay. Thank you,
10. Mr. Chairman.
11. MS. LARSEN: Chairman, commissioners, any
12. additional questions on any line items?
13. COMMISSIONER CHAN: Mr. Commissioner -- or
14. Mr. Chairman -- I'm sorry -- just a comment on what you
15. and Gina just presented. I think in spite of the
16. increase in the, you know, projected expense for that,
17. I personally have -- I really appreciate, I think, the
18. more robust approach that the Commission has been
19. taking. And I -- it sounds like this has all been part
20. of that.
21. And I think -- I don't know if I personally
22. experienced it, but on my Facebook feed I always get
23. Clean Elections, you know -- even though I follow Clean
24. Elections, it will say, you know, promoted or something
25. like that. So I know I'm getting more information from

10:09:07-10:10:24

1. projection. For 2017, we actually had projected --
2. when I presented this in 2016, we actually had
3. projected $750,000 in personnel services. So it's
4. about a $50,000 decrease in projection. That is just
5. so if there are any internal staff changes, any -- you
6. know, it allows Tom some leeway in case we hire new
7. employees, anything of that nature.
8. COMMISSIONER KIMBLE: Okay. And one other
9. question about external legal services which is
10. projected to be far higher than it's been in any of the
11. past four years, and I know we're being sued and we're
12. in court a lot for various things and it looks like
13. we're anticipating being in court a lot more.
14. MS. LARSEN: Chairman, Commissioner Kimble,
15. again, our projection for 2016, when I presented this
16. in -- or our projection for 2017, when I presented this
17. in 2016, was $500,000. We projected an increase
18. because we are in active litigation. It does not
19. necessarily mean that we will spend at that amount, but
20. it does offer us some leeway in not having to come back
21. to the Commission once we have exceeded a projected
22. amount and to come back and ask for more funds in the
23. middle of an election year.
24. So we have previously -- I believe in 2014
25. we projected $750,000 in external legal services, and
Mr. Collins: Okay. So the other thing I would note and the reason why 2014 is an important reference point is because we are, in fact, still litigating 2014 enforcement matters. In fact, the case we argued at the Supreme Court in 20 -- in September 11, 2014. And so I think there's an old adage that Joe Kanefield puts out that presidential years are crazy from an election administration perspective and state election, general elections are crazy from a political litigation perspective. And so given that we had to provide -- as Sara noted, we ended up spending under that projection in 2014. I certainly don't want to be in a position where -- you know, and part of this is optics. Part of this is reality. No person who decides they want to buck the Commission ought to think that the Commission does not have the resources to enforce its orders through legal means. And, on the other hand, you know, continuing to come back to you for re-upping the amount of money we are authorized to spend on lawyers does not do us any -- it becomes then a talking point for folks who don't like the act itself to say, oh, you're voting for more legal expenses. So I think Sara has a tendency to put -- to project conservatively in two respects. We project conservatively in terms of lower expectations of revenue and we project conservatively in terms of higher expectations of expenditures. I think that higher expectations of expenditures. I think that revenue and we project conservatively in terms of lower expectations of spending in our election years. And, on the other hand, you know, non-election years, we will not spend nearly the amount than we actually bring into the Fund, and in our election years we do anticipate that we will spend more than we actually bring into the Fund. And this is important because our non-election years help us build up the Fund in order to support our election years, our spending in our election years. So just a summary of the memo and the spreadsheets that you received and what we're asking you to approve. We're asking you to approve the 2018 expenditure cap. Each of those are $2,066,827. The additional caps off of that are the public education and -- or the enforcement cap at $20,668,270. The additional caps that we have ever made that Mark Brnovich and his office. So there is not a single expenditure that we make for legal expenses is pursuant to an express authorization from Attorney General Mark Brnovich and his office. So there is not a single expenditure that we have ever made that Mark Brnovich does not have given us the authority to go ahead and spend.

COMMISSIONER KIMBLE: Thank you.
1. projected voter education expenditures that are reasonable and necessary are $4,588,100. Our projected candidate funding is $8,973,613.
2. And then our four-year revenue projections, we do project that we will receive $7 million to $7.4 million a year into the Fund. And as to Commissioner Chan's question earlier, if the projected expenses -- if our projected expenses reach the annual expenditure limit, the Fund balance will run negative in Calendar Year 2020. So this is why we cannot spend at our cap because if we spend at our cap, we would not have any money in the Fund by the end of two years. And our assumed expenses would exceed revenues by $54,270,000 -- $270,580 -- sorry -- by 2021, resulting in a Fund balance of negative $25 million.
3. COMMISSIONER CHAN: Mr. Chairman, Sara.
4. CHAIRMAN TITLA: Commissioner Chan.
5. COMMISSIONER CHAN: You know, it's not that I expect us, obviously, to spend up to this expenditure cap, but even if we just spend what we've spent in the previous few years, it seems like we are still operating at a deficit of a few million dollars. And I think what Tom said, I guess, that kind of brings it into -- you know, brings up what Tom said about our revenues and, you know, the voter intent -- the voter protection of our Fund.
6. MS. LARSEN: Right. And, Chairman, Commissioner Chan, so we are going into 2018 with a healthy balance. We have $28 million, but our projected expenditures for 2018 are $17 million. So we have had years previously -- I believe in 2010 our Fund balance was down to $11 million -- or 2011. After the 2010 elections it was down to roughly a million -- $11 million. Did the microphone go off?
8. So, you know, our Fund balance waxes and wanes. Depending on the election year, that happens, and that we spend conservatively in our off election years. And that's when, you know, we bank up a lot of the revenues that come in, but if we determine that there are excess funds in the Fund, we will not have those revenues for our election year.
9. In fact, Sara will be wrapping up in January or February precisely what we spent in 2017 terms of the processing of the bills for this year. So we've got December bills to come. Those will get paid. We'll have -- so that won't get reconciled until her report you'll receive in January.
10. So it's important to make a distinction between what we project and what we spend. The fact is that we've always budgeted high, but it remains the fact that as a matter of statutory clear statute, our capacity is far in excess of our actual dollars in the Fund. And that incongruity is something that over time we will reach a delta where that becomes a real problem. So we are cognizant of that. We raise it. We are -- over the course of the last year, we've started to focus more and more on it, especially as things like the court issue arose.
11. So I think we're going to continue to look at that, but all that having been said, as far as actual spending, you'll get the actual spending for 2017 in January or February and then Sara -- I don't know if you know. You may not -- you may not always see it. You may not always notice it, but there are quarterly updates that Sara provides on an ongoing basis.
The State of Arizona Citizens Clean Elections Commission

Public Session Transcript of Proceedings

December 14, 2017

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10:27:06-10:27:54

1 basis just so we know where our -- where we are and
2 keeping track of it because, from our perspective,
3 putting aside the budgetary issues and making sure we
4 don't exceed any caps that are legally imposed and then
5 making sure that we're compliant with the budget that
6 we presented to you is something that the -- that we as
7 staff, you know, really is top priority.
8 Before -- before we make any decisions, the
9 first question is, is it legally compliant with the
10 caps and is it compliant with what we've told the
11 Commission? And then -- and then we do provide that
12 information to you on and ongoing basis, and you're
13 free to ask any of those questions at any time.
14 MS. LARSEN: Chairman, that's -- that's the
15 end of my presentation.
16 CHAIRMAN TITLA: Thank you for your report.
17 That's an excellent report and information that you've
18 given us.
19 Commissioners, we have the request that --
20 for approval of the 208 -- or 2018 expenditures cap
21 report.
22 MR. COLLINS: Yeah, Mr. Chairman, we've
23 written a proposed motion item. We think that Sara's
24 summary memo captures the caps and projections that are
25 required of us under statute, and so we would ask that

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10:27:56-10:29:28

1 we've -- the purpose of that memo was to do Items V-A
2 through C. So we're now on V-D, if I may.
3 CHAIRMAN TITLA: Okay. So that's all
4 passed then?
5 MR. COLLINS: Yes, except for V-D, which I
6 need to discuss separately with you.
7 CHAIRMAN TITLA: Okay. Now we are in V-D:
8 Discussion and possible action on 2017 Attorney General
9 Office Interagency Service Agreement.
10 MR. COLLINS: Mr. Chairman, commissioners,
11 this -- what I'm seeking here is -- and you have an
12 exemplar of an earlier drafted ISA before Ms. Karlson
13 and Mr. Larue were transferred to the agency counsel
14 section. I'm working with the head of the agency
counsel. There's a gentleman named Mark Nolan, who
16 we've -- who's -- you may not know him, but he's an
17 attorney we've worked with often and he's one of my
18 personal administrative law heroes.
19 So, anyway, what we have done for
20 purposes of -- because of the -- because of the
21 transfer and other issues, we -- or the AG's office is
22 halfway through its fiscal year, and we're at the close
23 of our calendar year.
24 So I'm seeking authorization to -- we've
25 already allocated the money in our budget from last

10:29:31-10:31:06

1 year to do this, but I'm seeking specific authorization
2 to do an ISA to backfill the Attorney General's Office
3 for calendar year, CY -- or Calendar Year 2017 not to
4 exceed $86,600; and then talk to Mr. Nolan and Aaron
5 McCarthy who is also in their agency counsel section
6 about doing a separate Interagency Service Agreement
7 for the remainder of the fiscal year which will come
8 back to you.
9 So -- so this is not anything new to the
10 Commission. It's simply I just wanted to give you a
11 heads up on where we are and wanted to seek your
12 approval to do an agreement that's essentially
13 retroactive, but I need to be able to sign a contract
14 with Mr. Nolan -- well, with the AG's office through
15 Mr. Nolan before the end of the calendar year just so
16 we can put a button on that. And that's my request.
17 CHAIRMAN TITLA: Commissioners, for Item
18 V-D, the director has asked to reach an agreement with
19 the Attorney General's Office for Calendar Year 2017
20 not to exceed a $86,600.  And then we do provide that
21 heads up on where we are and wanted to seek your
22 approval to do an agreement that's essentially
23 retroactive, but I need to be able to sign a contract
24 with Mr. Nolan -- well, with the AG's office through
25 Mr. Nolan before the end of the calendar year just so
26 we can put a button on that. And that's my request.
17 CHAIRMAN TITLA: Commissioners, for Item
18 V-D, the director has asked to reach an agreement with
19 the Attorney General's Office for Calendar Year 2017
20 not to exceed a $86,600.  And then we do provide that
10:31:08-10:32:26

CHAIRMAN TITLA: Motion is carried.

(No response.)

CHAIRMAN TITLA: Abstain?

(No response.)

CHAIRMAN TITLA: Opposed?

(Chorus of ayes.)

aye.

If not, all in favor say

Discussion?

(No response.)

CHAIRMAN TITLA: If not, all in favor say

aye.

(Chorus of ayes.)

CHAIRMAN TITLA: Opposed?

(No response.)

CHAIRMAN TITLA: Abstain?

(No response.)

CHAIRMAN TITLA: Motion is carried.

10:32:29-10:33:03

CHAIRMAN TITLA: Commissioner Kimble

Is there a second?

Commissioner Meyer.

CHAIRMAN TITLA: A motion has been made by

Commissioner Meyer.

Is there a second?

COMMISSIONER KIMBLE: Second.

CHAIRMAN TITLA: Commissioner Kimble

seconds the motion.

Discussion?

(No response.)

CHAIRMAN TITLA: If not, all in favor say

aye.

(Chorus of ayes.)

CHAIRMAN TITLA: Opposed?

(No response.)

CHAIRMAN TITLA: Abstain?

(No response.)

CHAIRMAN TITLA: Motion is carried.

10:33:05-10:34:37

1 books that they're on the hook for those things.

2 For example, we've had folks come back

3 months after the fact and say, oh, I just found this

4 receipt and, goodness, it was -- it was supposed to be

5 paid for by Clean Elections money. It ought to return

6 my money. Will you cut us a check? We would like to

7 end that practice because we think it's on the

8 candidate to reconcile those because the statutes and

9 rules say they're supposed to reconcile that up front.

10 Likewise, having a de minimis return of

11 Fund amount creates an issue where we don't want to get

12 a three cent check because it costs the state more

13 money and us more money to process that check than it

14 does for us to actually collect it which, from a

15 fiduciary perspective, means we should just let that

16 go.

17 So that's -- that's it. It's that cut and

18 dry, very little comment on it. And so we would ask

19 that you approve the amendments to R2-20-106 as laid

20 out in the proposed exempt rulemaking that's attached

21 to your Item 6A on page 1 and 2.

22 CHAIRMAN TITLA: Commissioners, a request

23 has made by the director.

24 COMMISSIONER MEYER: Mr. Chairman?

25 CHAIRMAN TITLA: Commissioner Meyer.
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<td><strong>Commissioner Kimble to approve R2-20-109.</strong></td>
<td><strong>Code.</strong></td>
<td><strong>Commissioner Kimble to approve R2-20-109.</strong></td>
</tr>
<tr>
<td>CHAIRMAN TITLA: A motion has been made by Commissioner Meyer to approve R2-20-106.</td>
<td>Is there a second?</td>
<td>CHAIRMAN TITLA: Second by Commissioner Meyer.</td>
</tr>
<tr>
<td>CHAIRMAN TITLA: Second by Commissioner Kimble.</td>
<td>All in favor say aye.</td>
<td>CHAIRMAN TITLA: Opposed?</td>
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<td>COMMISSIONER KIMBLE: Second.</td>
<td>(Chorus of ayes.)</td>
<td>(No response.)</td>
</tr>
<tr>
<td>COMMISSIONER KIMBLE: Opposed?</td>
<td>COMMISSIONER KIMBLE: Second.</td>
<td>CHAIRMAN TITLA: Abstain?</td>
</tr>
<tr>
<td>COMMISSIONER KIMBLE: Abstain?</td>
<td>(No response.)</td>
<td>(No response.)</td>
</tr>
<tr>
<td>COMMISSIONER KIMBLE: Motion is carried.</td>
<td>CHAIRMAN TITLA: Motion is carried.</td>
<td>The next item is VI-C, which is R2-20-111, non-participating candidate reporting requirements and contribution limits.</td>
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<td>We go to B now, R2-20-109, independent expenditure reporting requirements.</td>
<td>Commissioners, a request that.</td>
<td>Director?</td>
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<tr>
<td>MR. COLLINS: Yes. Mr. Chairman, these rules begin on Item VI, page 3, and carry over through page -- through page -- through the beginning of page -- the first paragraph of page 6 of your materials. We are asking here -- this is a reaffirmation of R2-20-109. As you may recall, back in the summer, the -- we ended up with this very strange situation where the Secretary's Office and the Governor's Regulatory Review Council and us all through the Governor's Office published notices respecting R2-20-109. Our goal here is to have a clean Arizona Administrative Code. R2-20-109 has been and continues to be the law in Arizona and we simply are asking for this reaffirmation which we hope and believe, in fact, should and would be shocked and dismayed if any other -- anything else were to happen -- should clean up the Arizona Administrative Code as published by Secretary Reagan because this is a clean -- this is a clean version. It has nothing to do with the invalid notice that GRRC provided to the Secretary's Office. So we would ask that you reapprove R2-20-109 at this time. CHAIRMAN TITLA: Commissioners, a request has been made by the director to approve R2-20-109. Any discussion? Motion? COMMISSIONER KIMBLE: Mr. Chairman. CHAIRMAN TITLA: Commissioner Kimble. COMMISSIONER KIMBLE: I move we reapprove Arizona Administrative Code R2-20-109. CHAIRMAN TITLA: A motion has been made by Commissioner Kimble to approve R2-20-109 Administrative Code.</td>
<td>All of the stuff that the -- GRRC has done. Whether it be valid or not, they've talked a lot. I think it's interesting to note that only the Arizona Advocacy Network and the League of Women Voters have weighed in on this. They both support this as 109. And so, again, we're ask that you reapprove R2-20-111, and I'm happy to answer any questions about that. CHAIRMAN TITLA: Commissioners, a request has been made by the Director to reapprove Arizona Administrative Code R2-20-111. Is there any discussion or a motion? COMMISSIONER KIMBLE: Mr. Chairman? CHAIRMAN TITLA: Commissioner Kimble. COMMISSIONER KIMBLE: I move we reapprove Arizona Administrative Code R2-20-111. CHAIRMAN TITLA: A motion has been made by Commissioner Kimble to approve R2-20-111. Is there a second? COMMISSIONER MEYER: Second. CHAIRMAN TITLA: Second by Commissioner Meyer. All in favor say aye. (Chorus of ayes.) CHAIRMAN TITLA: Opposed?</td>
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</table>
The State of Arizona  
Citizens Clean Elections Commission  

10:40:22-10:41:34 Page 54  

1 (No response.)  
2 CHAIRMAN TITLA: Abstain?  
3 (No response.)  
4 CHAIRMAN TITLA: Motion is carried.  
5 The next item -- the next item is VII:  
6 Discussion and possible action on Arizona Advocacy  
8 Director?  
9 MR. COLLINS: Yes. Mr. -- Mr. Chairman --  
10 and I'll try to keep this as brief as possible.  
11 Nate Arrowsmith, who is an associate at  
12 Osborn Maledon, who's been working us on this  
13 throughout, is here to answer questions. I wanted to  
14 make a few comments in public session and then I think  
15 that Nate and I go would recommend we go into executive  
16 session at some point, but the upshot is as, we  
17 mentioned in the executive director's report last  
18 month, the Arizona Advocacy Network, a union and a  
19 number of Democratic lawmakers who were -- who -- I  
20 think who believe their vote's validity was denied  
21 because of the Voter Protection Act under Senate Bill  
22 1516 filed a lawsuit.  
23 We were served with that lawsuit and have  
24 agreed with counsel for AZN, et al., to extend our time  
25 to respond to January 8th. We would file, in all  

10:41:39-10:43:05 Page 55  

1 likelihood, an answer at that time. I think it's  
2 reasonable to foresee that the state -- the Secretary  
3 of State and the Governor's Regulatory Review Council  
4 will file some form of motion to dismiss. Whether or  
5 not -- that's speculation, but I think it's a safe bet.  
6 The lawsuit in substance deals with some  
7 specific provisions of Senate Bill 1516 and then an  
8 overall framework set forth by both the state  
9 constitution and the federal and state constitution. I  
10 think the federal constitution, as far as equal  
11 protection.  
12 And just to summarize the claims, the Voter  
13 Protection Act claims pertain to, in effect -- or the  
14 effect of the Clean Elections Act having been passed in  
15 1998 and incorporating certain terms, those terms  
16 having been amended without a super majority or  
17 advancing the purpose of the Clean Elections Act by  
18 argument of, you know, AZN's position. You know,  
19 their -- they seek an injunction on some of those  
20 provisions.  
21 They seek an equal protection claim based  
22 on the fact that the "predominant purpose" definition  
23 that is incorporated into the political action  
24 committee definition that is incorporated into the  
25 political committee definition in Senate Bill 1516  

10:43:12-10:44:56 Page 56  

1 privileges certain speakers with tax status based on  
2 their entity formation and discriminates against  
3 others.  
4 And that, finally, there's an argument  
5 under Article 7, Section 16 of the Arizona Constitution  
6 which requires the legislature to have -- or the people  
7 to have -- not only to be political committees, but  
8 that those political committees publish their  
9 contributions and their expenditures before and after  
10 the election and that publicity be paid for for those  
11 expenses.  
12 So that's sort of the broad claim. My bet  
13 is that the Commission and the Secretary and the State  
14 and GRRC are all brought into the suit because each of  
15 us play a role in the implementation of Senate Bill  
16 1516 to one degree or another. So if AZN, et al.,  
17 wants to seek some form of relief and if they have some  
18 specific relief they're seeking, they would need any or  
19 all of those folks to be bound by it.  
20 So with that as public comment, I think it  
21 might be appropriate to briefly go into executive  
22 session so that Nate can talk to you a little bit more  
23 about the tactical and strategic issues related to  
24 that, if there's a motion to go into executive session.  
25 CHAIRMAN TITLA: Okay. Is there a motion
1. Is there any discussion or possible action by the Commission on this issue?
2. COMMISSIONER MEYER: Mr. Chairman?
3. CHAIRMAN TITLA: Commissioner Meyer.
4. COMMISSIONER MEYER: I'll make a motion to direct our counsel to file an answer to the complaint filed by the Arizona Advocacy Network as we discussed with counsel during executive session.
5. CHAIRMAN TITLA: Is there a second to the motion by Commission Meyer?
6. COMMISSIONER PATON: Second.
7. CHAIRMAN TITLA: Commissioner Paton seconds the motion.
8. All in favor say aye. (Chorus of ayes.)
9. (No response.)
10. ChAIRMAN TITLA: Abstain?
11. (No response.)
12. COMMISSIONER PATON: Abstain?
13. (No response.)
14. CHAIRMAN TITLA: The motion is carried.
15. We go to Item VIII: Discussion and possible action on authorization of staff to approve second payment of Calendar Year 2017 ISA with the Arizona Secretary of State's Office.

1. The motion is carried.
2. We go to Item IX: Discussion and possible action on MUR 17-02 and 17-03, American Federation for Children.
3. MR. COLLINS: Yes. Mr. Chairman, we received a complaint which is Exhibit 1 to the proposed conciliation agreement respecting a group known as the Arizona Federation for Children that made an expenditure related to a candidate. We have secured with them an agreement to -- to file a report with respect to that amount. They also made some expenditures in District 26 that were below our threshold. That is what MUR 17-03 is.
4. So what I would ask, unless you have any specific questions related to this -- this was on our agenda last month, then we had to delay it. I'm comfortable with this result. Although it does not require a fine, it does ensure that -- it does recognize that our reporting requirements are not the same as those that have been proposed in 16 -- in A.R.S. 1516 or in 8 -- it's Senate Bill 1516 and codified in A.R.S. 926 and that the respondent avows that these are accurate numbers and -- and the candidate and the respondent agrees to file complete expenditure reports regarding state legislative offices going forward. And I think it's overall a good agreement and resolves the matter.
5. I'm happy to answer any questions, but I'd ask your approval to authorize me to execute this conciliation agreement. And just as a side note, I will be dismissing, because they're in compliance, MUR 17-03 following this meeting and your approval of the -- of the conciliation agreement for my execution.
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<tr>
<td>1. CHAIRMAN TITLA: Any discussion or questions or possible action by the Commission on the request made by the director?</td>
<td>1. COMMISSIONER KIMBLE: Second.</td>
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<td>2. CHAIRMAN TITLA: Commissioner Kimble.</td>
<td>2. CHAIRMAN TITLA: Commissioner Kimble seconds.</td>
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<tr>
<td>3. COMMISSIONER KIMBLE: I move we authorize Executive Director Collins to execute the conciliation agreement with the American Federation for Children in MUR 17-02.</td>
<td>4. All in favor say aye.</td>
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<td>5. CHAIRMAN TITLA: Commissioner Kimble makes a motion.</td>
<td>5. (Chorus of ayes.)</td>
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<td>7. COMMISSIONER MEYER: Second.</td>
<td>7. (No response.)</td>
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<td>8. CHAIRMAN TITLA: Commissioner Meyer makes seconds.</td>
<td>8. CHAIRMAN TITLA: Abstain?</td>
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<td>9. All in favor say aye.</td>
<td>9. (No response.)</td>
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<td>10. (Chorus of ayes.)</td>
<td>10. CHAIRMAN TITLA: We’re adjourned at 11:19 a.m.</td>
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<td>12. (No response.)</td>
<td>12. COMMISSIONER MEYER: Be safe.</td>
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<td>14. (No response.)</td>
<td>14. (Whereupon, the proceedings concluded at 11:16 a.m.)</td>
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<tr>
<td>15. CHAIRMAN TITLA: Motion is carried.</td>
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<td>16. The next item is Item X: Public comment.</td>
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<td>17. Anyone wish to make a comment?</td>
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<td>18. MR. COLLINS: Any public comment? No. No</td>
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<td>1. public comment. I think we just need a motion to adjourn.</td>
<td>1. STATE OF ARIZONA )</td>
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<td>2. CHAIRMAN TITLA: All right. As chairman, and as said in the Apache way, we like to give items of appreciation for people that we work with, and I have an item here for Sara.</td>
<td>2. COUNTY OF MARICOPA )</td>
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<tr>
<td>3. Come up, please. This is the Apache way.</td>
<td>BE IT KNOWN the foregoing proceedings were taken by me; that I was then and there a Certified Reporter of the State of Arizona; that the proceedings were taken down by me in shorthand and thereafter transcribed into typewriting under my direction; that the foregoing pages are a full, true, and accurate transcript of all proceedings and testimony had and adduced upon the taking of said proceedings, all done to the best of my skill and ability.</td>
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<tr>
<td>4. So sorry, everyone.</td>
<td></td>
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<tr>
<td>5. Gina. These are the people I had most interaction with in my term. And Paula. And the rest, it's in the mail.</td>
<td></td>
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<tr>
<td>6. So thank you for all your work in your terms during the time that I worked with you. You guys have been professional, excellent and your work has been superior. Keep up the good work as you go through in the rest of your time here. So thank you. I appreciate it.</td>
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<td>7. MR. COLLINS: I just, again, want to remind you that you have to come to the January meeting.</td>
<td>I FURTHER CERTIFY that I am in no way related to nor employed by any of the parties thereto nor am I in any way interested in the outcome hereof.</td>
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<tr>
<td>8. CHAIRMAN TITLA: Is there a motion to adjourn?</td>
<td>DATED at Phoenix, Arizona, this 16th day of December, 2017.</td>
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<tr>
<td>9. adjourn?</td>
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<td>10. COMMISSIONER CHAN: Shall we?</td>
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<td>11. CHAIRMAN TITLA: Commissioner Chan motions to adjourn.</td>
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<td>12. Second?</td>
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