

THE NEWKIRK HERALD JOURNAL

Garfield D.A. Says County Commission Violated Law

Decides Not To Prosecute 'In Interest Of Justice'

By Wayne White

The Kay County Commission violated the law possibly 112 times in a three-year period, but it's not in the best interest of justice to prosecute them — so says Garfield County District Attorney Cathy Stocker.

Almost a year from the violation that triggered an investigation of the commission, Stocker, assigned to the case by the Attorney General Drew Edmondson, has issued a letter to the commission outlining violations of the Oklahoma Open Meeting Act that were discovered by investigators from the attorney general's office.

Mike Fields, Garfield County assistant district attorney, appeared before county commissioners Laila Wilson, Wayne Leven, and Dee Schieber Monday morning, and reviewed Stocker's letter and told of Stocker's decision not to prosecute them.

Fields told the commission the investigation included 163 meetings from Oct. 22, 2001 to

Dec. 27, 2004. During that time, the commission, which included former commissioner Rex Purdy until December 2002, violated the executive session provisions of the Open Meeting Act nine times, Fields said. Two of those executive sessions were held without being listed on the agenda.

"Neither of these executive sessions comply with the requirements of the law," wrote Stocker in the letter dated Sept. 14 and received by the commission Monday. "The remaining 7 executive sessions during this time period also did not comply with the requirements of the Act ... because the agendas did not explain the purpose and business of the executive sessions and they did not specifically state the statutory provision authorizing the executive sessions."

The executive session that prompted the original complaint from Kay County Court Clerk Glenda Emerson happened on Sept. 27, 2004. During that meeting, commissioners entered into executive session for the purpose of a "personnel issue," but had met behind closed doors with the apparent intent to discuss an incident involving Emerson and her request to a county employee to fuel and park her car. Stocker said investigators also looked into whether the commission adopted false minutes from that meeting.

"Some witness accounts verify the accuracy

of these minutes, while others do not," wrote Stocker. "Although this executive session did not comply with the Act because it was not sufficiently documented and detailed on the agenda, the accounts of this executive session from those present are so diverse, it is impossible to determine with any reasonable degree of certainty that the minutes from the executive session were false or inaccurate."

Following his appearance before the commission, Fields confirmed investigators could not determine what happened during the executive session.

"There was conflicting evidence regarding that particular meeting, not only who all was present, but also the sequence of events of what was said by each of those present," said Fields.

Following Emerson's complaint, the Newkirk Herald Journal also filed a complaint alleging every executive session held by the county commission since Oct. 25, 1999 had been in violation of the Open Meeting Act. The newspaper's complaint also alleged numerous other violations of the Act over a five-year period.

In addition to the executive session violations, Stocker's investigators, who were assigned from the attorney general's office, found that out of the 163 meetings, in 103 there were "significant discrepancies between the agendas and minutes." Those detailed in

Stocker's letter included a transfer of \$20,000 from one budget category to another when it was not proposed on the agenda; the award of a janitorial contract that wasn't on the agenda; and approval of a contract in the amount of \$23,542 although not on the agenda.

"And most significantly, the Board approved a \$2 million contract to construct a bridge but the action was not proposed on the agenda," Stocker wrote.

Stocker scolded the commission, "Although one would hope and expect two commissioners with 26 years of experience between them (Leven has been a commissioner since 1989, Schieber since 1995) would have sufficient training in the Open Meeting Act to know the legal requirements of conducting public meetings ..."

After noting investigators had not found the actions to be willful, Stocker said she had determined "it is not in the best interest of justice to file criminal charges" against the current and former members of the commission.

"Although it may be that you engaged in this behavior out of ignorance of your legal responsibilities under the open meeting law rather than disregarding known legal duties, I remain concerned about the conduct revealed by this investigation. As elected officials in this state you have a duty to the citizens to conduct business in accordance with the state's

laws and it is your duty to learn the laws applicable to the office you hold."

Stocker instructed the commission to "as soon as possible, receive specific training on the requirements of the Open Meeting Act in order to ensure full compliance with the law in the future."

The district attorney told the commissioners they were "hereby placed on notice that any future allegation that your actions violated the Open Meeting Act will be evaluated as though each of you has a clear understanding of the requirements of the Open Meeting Act."

Following Fields' review of the letter Monday morning before a crowd of over 50 people in a courtroom in the Kay County Courthouse, the commissioners had little to say.

"We understand and we will take this to heart," Wilson said, asking the other commissioners if they had anything to say.

"I'd better not," replied Schieber.

"The only comment I was going to make is it clearly says in there we didn't — we weren't acting — we were trying to take care of business, that's all I'm going to say ..." Leven said. "We were just trying to be the good guy. When somebody came in or something came up, we'd take care of it, but it'll be by the book from here on out. If we made mistakes, I apolo-

(Continued on page four)

D.A. Outlines Numerous, Repeated Violations Of Open Meeting Act

(Continued from page one)

gize for that."

Emerson asked to speak during the meeting. She told the commissioners she had been the topic "of one of your executive sessions that was outside the laws that govern executive sessions."

She said she had not been interviewed in the investigation, and had "never been approached by one of the commissioners regarding the incident that you addressed in your executive session, but I do have a few things I want to point out."

Saying that all county officers take an oath of office to uphold the rules and the laws that govern their offices, she informed the commission that classes are offered through Oklahoma State University and the Center for Local Government Technology and at Association of County Commissioners of Oklahoma meetings.

Emerson said Schieber and Leven had each attended such a meeting and

"neither one elected to enroll in that class."

"So I made an investigation of my own and determined that none of our county commissioners have ever attended an open meeting class," she said.

"You would think they'd want to take a class and learn the law that governs their office."

"I'm sick and embarrassed of Kay County being in the news. I'm certain all the other county officers as well as the citizens of Kay County would like to know they could trust their county officers here in the courthouse," Emerson said.

When contacted Tuesday, Wilson said he was not prepared to make a statement to the press, but noted not all the violations occurred during his term in office.

"I made mistakes and I'm going to rectify that," Wilson told the Herald Journal. "I'll take training or whatever I need."

Leven said Tuesday morning that he

had already enrolled in an open meeting law class scheduled for Oct. 5, but said he had not yet read the entire letter from Stocker.

He claimed ignorance of the law as his excuse for the violations, admitting he had never read the Open Meeting Act since holding office and had never taken a class on the subject.

"I thought we were doing things according to the way we should do them," Leven said. "We thought we were following the rules. Some of the things that came up, came up under new business, but apparently they shouldn't have been."

"We thought that personnel issues could be taken up in executive session, and as long as the vote was in open meeting," he said. "I never thought I was doing anything wrong, but apparently we were, so I'm going to class and we'll do it right from now on."

He noted that the commission followed the legal advice of Kay County District Attorney Mark Gibson and

then-assistant district attorney Phil Ross.

"We did our agendas as the district attorney told us at that time, and every time he told us to make a change, we made that change," said Leven. "I thought we were in compliance all along."

Schieber did not return a call to his office Tuesday before deadline.

When talking to reporters Monday, Fields refused to elaborate on Stocker's decision not to prosecute, echoing the district attorney's stated reason.

"The law clearly and plainly gives district attorneys and prosecutors discretion as to whether or not to file charges or if charges are ever brought," Fields said. "This is simply a matter of where that discretion was exercised to not file a criminal charge because we don't believe it's in the best interest of justice."

Fields told the media, "Our office clearly shares the concern that I know the citizens of Kay County share, and

that is that we want the public's business conducted publicly and appropriately according to the law. It's our intent by providing the letter we did today, as well as by appearing personally, we can positively influence future behavior of the board and try and get their compliance with the Open Meeting Act all the time under all circumstances."

The Oklahoma Open Meeting Act requires all public bodies to post an agenda prior to their meetings. The agenda is required to identify all items of business to be transacted by that public body. Agendas that propose executive sessions require sufficient information for the public to ascertain that an executive session is proposed, must identify all items of business and purposes for the executive session, and state specifically the provision of the law that authorizes the executive session.

The Oklahoma Supreme Court ruled in 1984 "For purposes of the Open Meeting Act, willfulness does

not require showing of bad faith, malice, or wantonness, but, rather, encompasses conscious, purposeful violations of the law or blatant or deliberate disregard of the law by those who know, or should know, requirements of the Act ..."

The Oklahoma Open Meeting Act has been in effect in substantially the same form since 1977 for the purpose of encouraging and facilitating "an informed citizenry's understanding of governmental processes."

Correction

In last week's story regarding homecoming royalty, the parents of two escorts were misidentified. Barry Phillips is the son of Dennis and the late Mary Phillips. Ace Engle is the son of Marsha and Randy Engle. We apologize for any inconvenience this may have caused.