



TENNESSEE HUMAN RIGHTS COMMISSION
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November 16, 2018
Board of Commissioners'
Meeting Minutes

Commissioners Present:

Commissioner Arnwine (Phone)
Commissioner Behler (Phone)
Commissioner Crafton (Phone)
Commissioner Crider (Phone)
Commissioner Derryberry (Phone)
Chair Houston (Phone)
Commissioner Martin (Phone)
Commissioner Sloss (Phone)
Commissioner White (Phone)

Commissioners Absent:

Staff Present:

Beverly Watts, Executive Director
Veronica McGraw, Communications Director
Lynn Cothren, Special Assistant to the Executive Director
Sabrina Hooper, Deputy Director
Gabrielle Lyons, Title VI Compliance Director
Dawn Cummings, General Counsel
Saadia Williams, Housing Coordinator (Phone)
Lisa Lancaster, Executive Assistant

Guests:

Allen Staley, Fiscal Officer

Call to Order

Chair Houston called the meeting to order at 9:06 a.m. and asked for a moment of silence for wildfire victims, hate crimes and violence to be followed by the roll call.

The minutes of the September 21, 2018 Board of Commissioners' meeting were reviewed. Commissioner Sloss made a motion to approve the minutes and Commissioner White seconded the motion. A vote was taken and passed.

Chair Houston asked to table the Strategic Planning discussion until Commissioner Derryberry can join us.

Executive Director's Report

Executive Director Watts began her report noting that the agency is in the process of filling the front desk customer service staff and the housing investigator position in Knoxville. The employment investigator position in Nashville has been filled and the Associate General Counsel, William Wade has been on board for two weeks.

There was a summer study on the disability bill which is complete and we were given an opportunity to respond to the draft which has now been sent to the Legislature. The purpose for the summer study is determine whether to file a disability and the content which will determine the agency authority. The study is 278 pages with the appendix and was received late last night and has been submitted to the legislative body. We will share the report with the Commission at a later date. Chair Houston asked Executive Director Watts to explain what the study is about for the new Commissioners. Executive Director Watts stated that a disability bill to provide THRC the authority to investigate accommodation issues was introduced during the legislative session. This bill would restore authority that two court decisions found that the Tennessee Disabilities Act (TDA) as it is currently written does not allow. Under the TDA THRC has authority to investigate disability as it relates to hiring, firing, failure to promote and the other areas. The original bill that was filed was consistent with the Americans With Disabilities Act with the authority being changed to the Human Rights Act

The Tennessee Chamber of Commerce and the National Federation of Independent Businesses objected to the bill. Currently all of these claims are being sent to the EEOC if they meet jurisdiction. Individuals with claims, where the employer has less than 15 employees, may have an option to file in state court. The agency sent 52 complaints to EEOC last year.

Commissioner Sloss asked who brought the bill that requested that this be placed in our law. Deputy Director Hooper noted that it was brought by the Tennessee Disability Coalition and authored by Representative Brooks and Senator Yeager. The Tennessee Disability Coalition approached THRC about helping them get the bill passed. Senator Yeager asked for a summer study after it was noted that it changed the law and Tennessee Human Rights Act and that precipitated the Senate to request the summer study and the House agreed. The Tennessee Commission on Aging and Disability is the group that conducted the summer study.

Executive Director Watt noted that the Annual Reports was printed this year and an electronic copy has been posted to the website. The THRC Annual Report will be sent to Commissioners, Legislators and Senators within the next two weeks. There were no copies of the Title VI Annual Report printed but it is posted on the website.

We have not heard anything with respect to our budget for 2020. We just received the questions earlier this week because the budget office is waiting for the transition team for Gov. Elect Bill Lee who may be attending some meetings. Allen Staley is available to discuss the current budget and we have provided the request list of staff and their salaries.

Commissioner Crider asked to return to the discussion of the legislation and asked what a constituent not receiving because the bill did not pass. Executive Director Watts noted that any individual that has a disability and needs a reasonable accommodation which is not covered under the Tennessee Human Rights Act would either have to go to the EEOC (if

the employer has 15 or more employees or to court (if the employer has less than 15 employees). If a person with a disability such as limited sight requested a special computer, or anxiety and the accommodation request may be to work from home but it were denied, THRC would not have the authority to investigate this allegations. We can provide intake and then transfer to EEOC for investigation if jurisdiction is met. Commissioner Crider repeated that if you have a visual impairment then the federal government is not there for you. Executive Director corrected that the State is not there for you. EEOC would take your complaint as long as there were 15 or more employees. There is a gap from 0 to 15 employees.

Executive Director Watts noted if you were fired because of a disability and there were 10 employees you would be covered under the Tennessee Human Rights Act. It would make the Tennessee Law would be consistent with the federal law. Most accommodations have little or small costs to employers.

Commissioner Crider noted that this legislation only covers employment complaints and does not apply to housing. The current law applies to employers with 15 or more employees and the bill would include employers with 8 or more employees. There were objections by the Chamber of Commerce and the Tennessee chapter of the National Federation of Independent Businesses.

The bill would make the reasonable accommodations compatible with Tennessee Human Rights Act at 8 or more employees. We provided information to the Tennessee Disability Coalition about what we could do and how it would work and helped them with the language of the bill. We did not seek sponsors on the bill and the TN Disability Coalition took the lead on the bill because they wanted it to pass.

Commissioner Crider asked if the Commission blessed this three years ago and it was sent to Law and Legislation and we began reporting on the progress of the bill since The TN Disability Coalition contacted us in November of 2017. Executive Director Watts indicated yes.

Commissioner Sloss reiterated that even if the amendment goes back up to 15 or more employees will make it consistent with the federal law. Executive Director Watts added that the summer study will be sent back to the legislature and they will make a decision based on whether or not what they currently have at 15 or more should go into our law. They could say no and not pick the bill back up. The TN Disability Coalition is still pushing to have this authority in the TN Human Rights Act.

Commissioner Sloss added that if the legislature takes the recommendation of going up to 15 employees it is a question of whether or not they want to give THRC the same authority as EEOC. State and local agencies exist for EEOC legislation to help expand this fabric of organizations that can respond because they don't have a lot of resources and they don't pay us a lot of money to work their cases but we do them.

Commissioner Sloss asked if they did decide to expand the law and give THRC the authority to work these cases, would we get reimbursed through the EEOC. Executive Director Watts said yes. THRC thinks it should be paid and the NFIB says we should not be paid. Commissioner Sloss understands that those organizations would not be for the

legislation to protect the interests of their members. The way to kill the bill would be to not fund the bill.

Executive Director Watts added that we would not get additional funding and noted THRC sent 52 cases to EEOC last year but believe only 15 of those would get a full investigation annually if we got the authority. We would be doing more education and outreach on this matter if it became part of the TN Human Rights Act. This would be a new change and that would be something we have to do but we don't believe that would cost additional funds. Commissioner Sloss thought that maybe a compromise might work to give the complainants an additional place to file a complaint and then we transfer them to EEOC. Executive Director Watts noted that we have the authority to do that now.

The report was turned over to Allen Staley, Fiscal Officer to discuss the current budget document found in the packet. The document covers the period through September 30, 2018 and there are no issues. We have expended 21% of the budget during the first 25% of the year. There is a large credit under the federal revenue of \$410,268 which represents the reversal of the accrual from last year. Every year we have to accrue the revenue that we expect to receive from HUD and when you book it in one year you have to reverse it the next year.

The fiscal year 2020 budget hearing schedule with the Finance and Administration Budget Office has not occurred yet. We received word that schedules will be sent out soon but we have not received that information yet.

Commissioner Crafton noted we are constantly battling case backlogs and staff have so many cases and can only do so much and we operate through reimbursements and asked if we have ever run the numbers of how many cases one person can manage and what the reimbursement from HUD so that we could make the business case at the next opportunity to say that the cost benefit analysis shows that if we could add some extra positions to help relieve some of the stress and reduce backlog it would pay for itself or show a net profit. Executive Director Watts indicated we have done a study and indicated that we don't have a significant backlog that would warrant that type of action.

Commissioner Crafton asked Deputy Director Hooper what the analysis showed. Executive Director Watts asked if can make a report to you and provide documents and talk to you in more detail so we can give a real sense of what the information shows? That way you get an opportunity to ask questions about specific data. Commissioner Crafton added that his up front bottom line is can one investigator do enough work to fund their salary with the case reimbursements. Executive Director Watts answered no but added that we have state funding and federal funding and the state funding on the employment side helps to make the whole. The reimbursement is not intended to fully fund a position; it is intended to support expenses and individuals can get access at the state and local level to the investigative process. Commissioner Crafton would like to have that that report and information. Executive Director Watts noted we will get that information so you can understand what the agreement says, what the dollars look like and what the state funding look likes. Allen Staley will pull the information together noting that it is a combination of the EEOC and HUD agreements, what we have to do for each agency. Chair Houston added that the next meeting is in January and we can have that information available then.

Executive Director Watts indicated during the legislative budget process items will be sent to Budget and Audit Committee.

Chair Houston noted that she has recorded the questions and we will make sure that we have this information at the January meeting. Commissioner Sloss asked what the reimbursement schedule is for HUD and EEOC. It was noted that EEOC pays \$700 per closed case and \$70 per intake cases and HUD pays \$2,800. You should be able to see how many cases a housing investigator will do and how many employment cases they can do in a 12 month period which should answer your question if they are able to fund themselves. Looking at the salaries of the investigators I would imagine by the time you add benefits on you will be looking at about \$50K.

Executive Director Watts added that the reimbursement was never intended to fund the position but was to supplement the state funding which allows us to bridge gaps about what we are able to fund. Most of our budget is for funding of staff and our operations budget is very small and if cuts are necessary that is where we cut. Commissioner Crafton wishes that we could look at the investment we make in training staff to do housing and in cross-training and doing different types of cases and we want to adjudicate the case and help the complainant through that process and work through that but if we could get more cases through that would solve a lot of the funding. I just thought some of the work could be done on a per unit of work basis with a third year law student to help work through the things that take a lot of time and free the investigator up to do other things.

Executive Director Watts noted indicated she did not believe the budget will allow us funds to contractors because it is currently covering the current staff we have. Commissioner Crafton shared if you get a \$2900 case in and you pay \$300 for research then you have some economies of scale for the agency to keep a larger percent of the money where you use a very small percentage to do a portion of the work and you have that net gain where you can have even more regular employees.

Chair Houston agreed that we will have information at the January meeting so we have documents in front of us and won't be operating off what we think and will be looking at real data. Any other questions that anyone has I would like them to share those questions with me prior to the January meeting so that we can make sure that we are able to address them at the meeting. I have added the three questions from Commissioner Sloss and I would like the staff to have the opportunity to pull the data that is requested and have that in front of us. Debating in this form is not productive without documentation. Everybody is attempting to get to the same place and it is just figuring out how to allow the agency to operate with the best efficiency possible.

Chair Houston asked for questions on the budget. She asked Mr. Staley what the anticipated timeframe for scheduling was. He noted that next week he expects to hear from the budget office for the 2020 budget hearings.

Hearing no other questions for the Executive Director's report a motion was made by Commissioner Crafton and seconded by Commissioner Martin. A vote was taken and passed.

Chair Houston shared that she received the question from Commissioner Derryberry and had received additional strategic planning information from Commissioners and would

forward those to her and the facilitator Trish Holiday. Commissioner Derryberry voiced the need to have the information shared with the Commissioners before the December 6, 2018 Retreat follow up meeting to make good use of the time together to come up with the 30/60/90 day plan of what we want to be doing in the coming year.

Chair Houston will get the information out to the Strategic Planning Committee and they share it with the Commissioners the week after next.

Employment Case Report

Deputy Director, Sabrina Hooper shared that during the time period from September 1, 2018 – October 31, 2018, there were two mediations that closed. The first was resolved with \$23K being received by the complainant and the second was resolved with an outside agreement and the terms were confidential.

An update on the data from the 2016 Comptroller's Audit from July 1, 2018 through October 31, 2018 monitoring the three findings in employment and housing showed that intake staff is operating at an average of 39 days for 59 complaints being assigned which is less than the goal average of 40 days.

In housing there were 13 reconsiderations received and all were completed timely within 30 days. Employment received five reconsiderations and all were completed within 30 days. The investigators prepared their investigative plans timely in all 85 instances. The investigators timely sent all 54 housing acceptance and notification letters.

Commissioner Behler made a motion for accept the Employment case report. Commissioner Arnwine seconded the motion. A vote was taken and passed.

Chair Houston congratulated the staff and Deputy Director for being in compliance with the audit findings.

Housing Case Report

Housing Coordinator, Saadia Williams reported on the September 1, 2018 to October 31, 2018 time frame noting that to meet the HUD efficiency goal for closing cases 50% of cases must be closed within 100 days. For the month nine cases were closed and seven or 78% were closed under 100 days or less. And for the time period the goal stands at 54%. Staff closed 35 dual filed cases with 19 or 54% being closed within 100 days.

Commissioner Sloss asked how many cases are in the housing inventory. Housing Coordinator Williams noted there are in excess of 100 dual filed cases currently in inventory.

With no other questions Commissioner Martin made a motion to accept the housing report and Commissioner White seconded the motion. A vote was taken and passed.

Title VI Compliance Report

Title VI Compliance Director, Gabrielle Lyons reported on the period September 1, 2018 to October 31, 2018 noting that all 48 Implementation Plans were received on time and once they are all reviewed that information will be shared at the next Commission meeting.

Staff completed the Compliance review on the Community Service Agency and in the first week of December on-sites will be conducted for the compliance review of the Department of Commerce and Insurance. Follow up information will be shared in January.

With no questions a motion was made by Commissioner Derryberry to accept the Title VI report and seconded by Commissioner Sloss. A vote was taken and passed.

Legal Report

General Counsel, Dawn Cummings shared that the Associate General Counsel position has been filled by William Wade. He received his juris doctorate from the Nashville School of Law and comes from his private practice Massengill and Wade. Mr. Wade was a staff attorney at a law firm for three years before starting the firm. He started on October 22, 2018 and has been busy.

There have been seven conciliations of the cause cases for the period. Case one was settled at a deposition when it was decided that the party was not competent to be deposed. For case five under the housing section legal the Commission settled this case without the Complainant in a bilateral agreement. Attempts to contact the Complainant were unsuccessful.

Coming up in December legal will conduct two depositions on case one and two and there are two or three hearings scheduled in 2019.

There were no questions for legal and Commissioner Behler made a motion to accept the legal report and Commissioner White seconded the motion. A vote was taken and passed.

Communications Report

Veronica McGraw, Communications Director reported on the September 1, 2018 to October 31, 2018 time period by sharing the updated Education and Outreach calendar and noted that upon receipt of new information the calendar will be up dated and shared with Commissioners.

The social media analytics have been reviewed and it was reported that we have a good presence on our accounts with news and events and information about THRC. The analytics suggest that we are averaging 4 to 5 likes per week. At the end of October we have over 1K likes on our Facebook page and 450 likes on Twitter. This reflects a big jump from last year and is due to increased activity over the last few months.

The agency is planning to increase our reach to the state by using radio ads, newspaper ads, and partnering with other agencies such as other ethnic groups such as the Hispanic community and others throughout the state. We are keeping a presence at other events to increase our outreach initiative. The THRC Annual Report and the Title VI Annual Reports are posted on the website and hard copies are being sent out as noted by Executive Director Watts earlier.

Chair Houston apologized for incorrectly identifying the Communications Director as the Communications Officer as it appeared on the agenda.

Commissioner Derryberry asked about the advertising placement and if we could measure the return on investment for those. Communications Director McGraw noted that there is a

way to track those but currently we are tracking them internally but we can request analytics from newspapers and radio stations who should produce those reports for us since we are paying for those ads and we can provide reports.

Executive Director Watts noted that the return on investment is the question of how does it relate to the work we do. We are going to see if we can develop some background on ads, events and training to determine impact. On our complaint form we ask where did you hear about us? We will share that data with the Commission and have our investigators to ask specific questions.

Commissioner Arnwine made a motion to accept the Communication report and Commissioner Derryberry seconded the motion. A vote was taken and passed.

There were no public comments. Chair Houston reminded the Commissioners that the Retreat follow-up on December 6, 2018 and invited all to attend and also attend the All Staff meeting with staff on Friday December 7, 2018. It will give an opportunity to meet the entire staff and thank them for the work they do. She has attended a couple of the annual meetings and finds them to be informative and it is nice way to get to know the staff.

Commissioner Sloss commended whoever is responsible for the new structure of the meetings stating that it seems to give more opportunity to ask more questions in and the meetings run more efficiently. Thank you to Madam Chair or Executive Director Watts or whoever's idea it was. Chair Houston noted that it was Commissioner Derryberry's idea. Commissioner Sloss thanked her for the idea and Commissioner Crafton agreed.

The next Commission Meeting will on January 18, 2019 and is telephonic. The questions from this meeting will be addressed at this meeting and if there are other questions please send them to the Chair.

Commissioner Crafton made a motion to adjourn and it was seconded by Commissioner Sloss. The meeting was adjourned at 10:06 a.m. CST.