

**Special Committee to Investigate
the Insurance Commissioner
Oklahoma House of Representatives**

**Final Report
August 30, 2004**

Mr. Speaker:

We, the members of the Special Committee to Investigate the Insurance Commissioner, of the 1st Extraordinary Session of the 49th Legislature, beg leave to submit the following report:

On March 30, 2004, and on May 19, 2004, the House of Representatives passed resolutions in regular and special session, which authorized the appointment of a special investigating committee to conduct a comprehensive and detailed study and investigation of the activities of Carroll Fisher, the Insurance Commissioner of the State of Oklahoma, to determine whether Articles of Impeachment should be preferred against him. The Committee was appointed by the Honorable Larry E. Adair, Speaker of the House of Representatives.

**I.
Grounds for Impeachment**

Section 1 of Article VIII of the Oklahoma Constitution enumerates the grounds under which certain public officials may be impeached and provides in pertinent part as follows:

“The Governor and other elective state officers, including the Justices of the Supreme Court, shall be liable and subject to impeachment for wilful neglect of duty, corruption in office, habitual drunkenness, incompetency, or any offense involving moral turpitude committed while in office. . . .”

**II.
Committee Procedure**

The Committee met nineteen times in both public and executive sessions beginning April 5, 2004, and ending August 30, 2004. At the first meeting, the Committee adopted certain Rules of Procedure which were supplied to each witness prior to their testifying before the Committee.

Thirty-eight witnesses appeared before the Committee. Every effort was made by the Committee to hear all evidence which would be relevant to the charge given to the Committee by the House of Representatives. Attempts were made to subpoena several witnesses located outside the jurisdiction of the Committee, but efforts to serve the subpoenas were not successful. In addition, Carroll Fisher and Opal Ellis were subpoenaed to appear before the Committee. However, in written statements to the Committee, Carroll Fisher and Opal Ellis declined to testify claiming their constitutional right not to incriminate themselves and did not appear before the Committee.

The Committee adopted a burden of proof of clear and convincing evidence as a standard to guide the decision making of the Committee.

Pursuant to the order of Robert D. Simms, Presiding Judge of the Multicounty Grand Jury, redacted Grand Jury transcripts, records, and documents received by the Committee were permitted to be disclosed only to the members and staff of the Committee and shall not be open for public inspection. Also pursuant to the request of the Ethics Committee and to Section 257:30-1-6 of the Rules of the Ethics Commission, certain records and documents received by the Committee from the Ethics Commission shall remain confidential and not open for public inspection.

III. Allegations Investigated

A.

CARROLL FISHER MISHANDLED MONEY RAISED IN CONNECTION WITH AN INSURANCE CONTINUING EDUCATION PROGRAM.

With regard to the allegation that Carroll Fisher embezzled money raised in connection with an insurance continuing education program, the committee took testimony and received documents from the following witnesses:

1. Tommy Butler - Criminal Investigator for the Multi-County Grand Jury Unit of the Office of the Attorney General;
2. David Hanigar - Auditor with the Office of the State Auditor and Inspector;
3. Charlie Swinton - Senior Vice President of BancFirst;
4. Nancy Tackett - Fiscal and Personnel Director for the Oklahoma Insurance Department;
5. Phil Combs - Claims Adjuster for GHS Insurance Company, a subsidiary of Blue Cross/Blue Shield;
6. Bert Marshall - Public Affairs Unit of Blue Cross/Blue Shield;
7. Marilyn Kreidler - Former Director of the Nigh Center at University of Central Oklahoma;
8. Jerry Scribner - Assistant State Treasurer of Oklahoma;
9. Phil Marsh - Director of Agent Licensing for the Oklahoma Insurance Department;
10. Stephen Garrett - Senior Vice President and General Counsel of American Fidelity Insurance Company;
11. Robert Thomas, Jr. - Vice President and Associate General Counsel for Mega Life and Health Insurance Company;
12. Justin Whitefield - Former General Counsel of Oklahoma Farm Bureau Mutual Insurance Company; and
13. Randy Compton - Certified Public Accountant.

Pursuant to this allegation, the Committee finds: Carroll Fisher, while acting in his official capacity as Insurance Commissioner, initiated and coordinated an official program of his office called "Continuing Education Day a/k/a/ C.E. Day" in which monies were solicited and collected from so-called sponsors and persons desiring to attend such program. No receipts were given for the monies collected pursuant to the C.E. Day program. Instead of depositing the monies

collected with the State Treasurer, as required by state law, the monies were deposited into multiple personal bank accounts. The deposit of such monies into personal bank accounts is in violation of state law. Specifically, Section 7.1 of Title 62 of the Oklahoma Statutes provides in part:

There is hereby created in the official depository in the State Treasury an agency clearing account for each state officer department, board, commission, institution or agency of the state . . . It shall be the duty of each state agency, officer or employee, to deposit in the agency clearing account . . . all monies of every kind . . .

In addition, at the time of the events set forth in this allegation, Section 341 of Title 21 of the Oklahoma Statutes provided in part as follows:

Every public officer of the state . . . receiving any money or other thing of value on behalf of or for account of this state or any department of the government of this state . . . who . . . willfully omits or refuses to pay over to the state . . . any money or interest, profit or perquisites arising therefrom, received by him under any duty imposed by law so to pay over the same shall, upon conviction thereof, be deemed guilty of a felony . . .

The actions and conduct of Insurance Commissioner Carroll Fisher in the mishandling of the C.E. Day program monies demonstrate his inability to manage the duties of the office of State Insurance Commissioner and therefore constitute the impeachable offenses of wilful neglect of duty and incompetency.

B.

CARROLL FISHER IMPROPERLY SOLICITED MONIES FROM ENTITIES HE REGULATED FOR A CHARITY HE ESTABLISHED.

With regard to the allegation that Carroll Fisher improperly solicited monies from entities he regulated for a charity he established, the Committee took testimony and received documents from the following witnesses:

1. Jack Davis - Chief Investigator for the Office of the Attorney General;
2. Tommy Butler - Criminal Investigator for the Multi-County Grand Jury Unit of the Office of the Attorney General;
3. Pete White - Attorney
4. Phil Combs - Claims Adjuster for GHS Insurance Company, a subsidiary of Blue Cross/Blue Shield;
5. Bert Marshall - Public Affairs Unit of Blue Cross/Blue Shield;
6. Phil Marsh - Director of Agent Licensing for the Oklahoma Insurance Department;

7. Stephen Garrett - Senior Vice President and General Counsel of American Fidelity Assurance Company;
8. Robert Thomas, Jr. - Vice President and Associate General Counsel for Mega Life and Health Insurance Company;
9. Justin Whitefield - Former General Counsel of Oklahoma Farm Bureau Mutual Insurance Company; and
10. Randy Compton - Certified Public Accountant.

As for this allegation, the Committee finds: Standing alone, this conduct does not in itself, constitute an impeachable offense. However, the conduct, when considered with other conduct presented in this report, exhibits a continuing pattern of activity which constitute the impeachable offenses of incompetency and corruption in office.

C.

CARROLL FISHER USED THE POSITION OF INSURANCE COMMISSIONER TO OBTAIN, DURING A POLITICAL CAMPAIGN, THE CONFIDENTIAL EMPLOYMENT APPLICATIONS AND DOCUMENTS OF HIS OPPONENT AND WRONGFULLY RELEASED SUCH CONFIDENTIAL INFORMATION TO THE PUBLIC.

With regard to the allegations that Carroll Fisher used the position of Insurance Commissioner to obtain, during a political campaign, the confidential employment applications and documents of his opponent, the Committee took testimony and received documents from the following witnesses:

1. Rhonda Langley - Investigator for the Office of the Attorney General;
2. Greg Shields - Chief Investigator for the Fraud Unit of the Oklahoma Insurance Department;
3. Kim Decker - Governmental Affairs Representative for Farmers Insurance Company;
4. Wes Combs - Former Assistant General Counsel for the Oklahoma Insurance Department;
5. Frank Stone - Assistant Insurance Commissioner and Chief Actuary for the Oklahoma Insurance Department; and
6. George Phillips - General Counsel of the Oklahoma Insurance Department.

As for this allegation, the Committee finds: Carroll Fisher, while acting in his official capacity as Insurance Commissioner, obtained and then disseminated to the public the confidential employment application and accompanying documents of a political opponent. At the time of the request and at the time of the release of such information by the Commissioner, he was under a statutory duty not to disclose such confidential information.

By obtaining this confidential information and then releasing it to the public, Carroll Fisher gained a political advantage to the detriment of his political opponent. Therefore, the Committee finds that Insurance Commissioner Carroll Fisher's use of his official office and position to

obtain and publicly disseminate confidential information to acquire an advantage and gain a benefit over his political opponent constitutes the impeachable offenses of wilful neglect of duty and corruption in office.

D.

**CARROLL FISHER SOLICITED AND ACCEPTED GIFTS, IN THE
FORM OF ARTWORK AND FURNITURE, FROM ENTITIES
REGULATED BY THE INSURANCE DEPARTMENT.**

With regard to the allegation that Carroll Fisher solicited and accepted gifts, in the form of artwork and furniture, from entities regulated by the Insurance Department, the Committee took testimony and received documents from the following witnesses:

1. Charlie Swinton - Senior Vice President of BancFirst;
2. Steve Simpson - Vice President of Brown Furniture Company of Shawnee;
3. Troy Wesnidge - Custom Furniture Manufacturer;
4. Angela Ables - Attorney
5. Charlie Morgan - Senior Vice President for Marketing and Government Relations for National American Insurance Company;
6. Nancy Tackett - Fiscal And Personnel Director for the Oklahoma Insurance Department;
7. Jay Galt - Former General Counsel for the Oklahoma Farmers Union Insurance Company;
8. Phillip Klutts - Former President of Oklahoma Farmers Union Insurance Company;
9. James Hodges - Owner of Hodges Restaurant Supply Company;
10. Jean Budd - Interior Designer and Owner of Interior Concepts;
11. Brian Renz - Senior Vice President of BancFirst;
12. Steven Najjar - Executive Vice President and General Counsel for Hanover and Sterling Holdings, Inc.;
13. Carol Palmer - Office Manager for the Assistant Receiver's Office;
14. Marcia Brejda - Former Financial Analyst for the Oklahoma Insurance Department;
15. Stephen McCaleb - Former Assistant General Counsel for the Oklahoma Insurance Department;
16. Jim Chastain - Former Assistant General Counsel for the Oklahoma Insurance Department;
17. Karl Kramer - Assistant General Counsel for the Oklahoma Insurance Department; and
18. John Beers - Chief Examiner for the Financial Division of the Oklahoma Insurance Department.

As for this allegation, the Committee finds: A "Form A" application by an entity controlled by Gene Phillips Group of Texas to acquire American Reserve Life Insurance Company, an

Oklahoma domestic insurer, was denied by the Oklahoma Insurance Department in 1996 on the grounds that the applicant lacked capacity and integrity. After Carroll Fisher was elected Insurance Commissioner, the Gene Phillips Group re-filed the Form A application. The staff of the Oklahoma Insurance Department recommended that the Form A application be denied on the grounds last stated. The Chief Examiner of the Oklahoma Insurance Department conveyed the recommendation to Carroll Fisher. Carroll Fisher told the Chief Examiner that the Form A application would be approved regardless of such grounds. When told that the independent hearing examiner would likely not approve the application, Carroll Fisher removed the independent hearing examiner and acted as the hearing examiner and subsequently approved the application. At or about the same period of time, Carroll Fisher solicited and thereafter accepted approximately \$20,000 of furnishings and furniture from the Gene Phillips Group, for Carroll Fisher's office within the Insurance Department. Thereafter, Carroll Fisher acted as the hearing examiner whenever an entity controlled by the Gene Phillips Group filed an application to acquire control of other insurers. Carroll Fisher never sat as the hearing examiner on any application filed by anyone other than the Gene Phillips Group. Further, the foregoing represents a pattern and practice of and by Carroll Fisher in the solicitation and acceptance of furnishings and furniture from entities regulated by the Insurance Commissioner. The solicitation and acceptance of items of substantial value in exchange for favorable rulings constitutes an impeachable offense of corruption in office.

E.

CARROLL FISHER HAD DISTRIBUTED THOUSANDS OF "FRIENDS OF FISHER" STICKERS TO MEDICAL PROFESSIONALS ALONG WITH INSTRUCTIONS TO AFFIX THEM TO INSURANCE CLAIMS SUBMISSIONS OR PROBLEM CLAIMS CORRESPONDENCE TO OBTAIN FASTER CLAIMS PROCESSING SERVICE.

With regard to the "Friends of Fisher" sticker allegations, the Committee received documents from the following witness:

1. Marilyn Hughes - Executive Director of the Ethics Commission.

As for this allegation, the Committee finds: The evidence does not reflect activity which constitutes or rises to the level of an impeachable offense.

F.

CARROLL FISHER AUTHORIZED THE ISSUANCE OF A CHECK FOR OVER \$35,000.00 TO A FLORIDA ATTORNEY FOR "ATTORNEY FEES AND EXPENSES" FROM THE ACCOUNT OF AN INSURANCE COMPANY THAT WAS FORCED INTO CONSERVATORSHIP BY THE INSURANCE COMMISSIONER.

With regard to the allegation that Carroll Fisher authorized the issuance of a check for over \$35,000.00 to a Florida attorney for "attorney fees and expenses," the committee took testimony and received documents from the following witness:

1. Steven Silverstein - Former Chairman of Heritage National Insurance Company; and
2. George Phillips - General Counsel of the Oklahoma Insurance Department.

As for this allegation, the Committee finds: The evidence available to the Committee at this time does not reflect activity which constitutes or rises to the level of an impeachable offense.

G.

CARROLL FISHER DEPOSITED A \$1,000.00 CAMPAIGN CONTRIBUTION CHECK INTO HIS OWN PERSONAL CHECKING ACCOUNT.

With regard to the allegation that Carroll Fisher deposited a \$1,000.00 campaign contribution check into his own personal checking account, the Committee took testimony and received documents from the following witnesses:

1. Tommy Butler - Criminal Investigator for the Multi-County Grand Jury Unit of the Office of the Attorney General;
2. David Hanigar - Auditor with the Office of the State Auditor and Inspector; and
3. Randy Compton - Certified Public Accountant.

As for this allegation, the Committee finds: The Committee received evidence that Carroll Fisher, while acting in his official capacity as Insurance Commissioner, received a \$1,000.00 check from an individual which was clearly intended as a campaign contribution for Carroll Fisher. On May 22, 2003, Carroll Fisher deposited the check into his personal bank account and subsequently drew on such balance. Carroll Fisher failed to report the campaign contribution to the Oklahoma Ethics Commission as required by law. State law and the rules of the Oklahoma Ethics Commission also prohibit the conversion of campaign funds for personal use. Insurance Commissioner Carroll Fisher's use of campaign funds for his personal benefit and failing to report such contribution constitute the impeachable offense of corruption in office.

IV.

Conclusion

The Committee finds that the above allegations and the evidence presented relating thereto involving the actions of Insurance Commissioner Carroll Fisher constitute wilful neglect of duty, corruption in office, and incompetency. The Committee recommends the House of Representatives of the 1st Extraordinary Session of the 49th Legislature vote Articles of Impeachment against Carroll Fisher, Insurance Commissioner.


V.
Recommendations

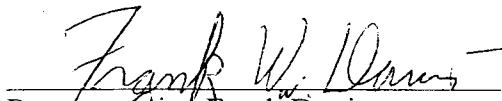
The Committee makes the following recommendation to the Honorable House of Representatives;

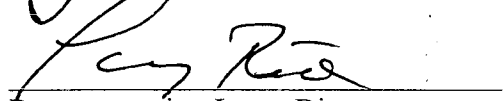
1. That the following matters should be prepared, introduced and enacted as legislation in the 1st Session of the 50th Legislature:
 - a. That the office of the Insurance Commissioner be changed from an elected office to an appointed office;
 - b. That all appointed or elected state officers be prohibited from soliciting or receiving any gifts from persons or entities regulated by such officers;
 - c. That the statutes be amended to prohibit the Insurance Commissioner from sitting as a hearing examiner within the Insurance Department; and
 - d. That all gifts to the state or any agency thereof shall be approved by the Governor before the delivery of such gift.
2. That this report be received, accepted, and approved.
3. That this report in its entirety shall be published in the Journal of the House of Representatives.


Respectfully submitted, on this 30th day of August, 2004,



Representative Opio Toure, Chair

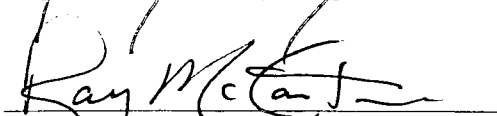

Representative John Nance


Representative Frank Davis


Representative Larry Rice


Representative Larry Ferguson


Representative Paul Roan


Representative Ray McCarter


Representative Larry Roberts