EXECUTIVE SUMMARY

Captive Agency

Part III: Business owners whose companies answer to the Railroad Commission can serve on the commission.

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The Railroad Commission of Texas (RRC) is a 130-year-old state agency that oversees oil and gas development, coal and uranium mining, and natural gas utility service among other functions. Its mission is to serve Texas through stewardship of natural resources and the environment, concern for personal and community safety, and support of enhanced development and economic vitality for the benefit of Texans. Too often, the commission has focused on accelerated oil and gas development at the expense of safety, economic vitality and stewardship of natural resources and the environment.

Agency policies that let sitting commissioners profit from the industry that they oversee may exacerbate this inadequate oversight. In this report, Commission Shift and Texans for Public Justice explore Railroad Commission policies that undermine balanced governance of oil and gas development.

Commission Shift and Texans for Public Justice reviewed the three sitting commissioners' personal financial statements filed with the Texas Ethics Commission. This report focuses on Commissioner Jim Wright's personal financial statements. Other reports in this series examine the financial statements of his two commission colleagues.

The Railroad Commission requires commissioners to recuse themselves from a measure, proposal, or decision in which they have a "personal or private interest."[1] However, the law specifically exempts officials from recusal in situations where their interest is the same as all others "similarly engaged in the profession, trade, or occupation."[2] Individuals who own companies subject to the RRC's oversight are allowed to be railroad commissioners. In Commissioner Wright's case, the law grants him the privilege of making decisions for the same part of the industry from which he profits.

Commissioner Jim Wright is an entrepreneur who has had interests in at least 28 oil and gas waste companies, some of which are dormant or defunct. Wright reported active interests in 18 companies in his recent personal financial statements.[3] Some of these companies have recurring issues before his agency. Commissioner Wright and the Railroad Commission's ex-permitting manager run a company that specializes in securing permits from Wright's agency.[4] Another Wright company has a Railroad Commission permit to recycle oil and gas waste into road-building material—and issue that Wright has been promoting with the Texas Department of Transportation. These factors go a step beyond the concept of a "captured regulatory agency," where the industry heavily influences the agency that regulates it. In this case, a regulated business owner now heads the agency that regulates his businesses.

Wright's state-mandated personal financial statement suggests that—apart from his 90-acre homestead outside Sandia, Texas and the seaside condo he sold in 2021—all of his assets are connected to his oil and gas businesses. The value of his stakes in those businesses is unknown, however, because the largest asset or income valuation category in the required state disclosures is "$44,630 or more."[5] In contrast, the largest income category in required federal congressional financial disclosures is $5 million or more,[6] and the largest asset category is $50 million or more.

Prior to joining the commission, Wright reached a settlement agreement with the agency over serious compliance issues related to one of his own waste facilities. Meanwhile, Wright led an industry task force that unsuccessfully urged the commission to change rules designed to protect surface and groundwater from industry waste.[7] In an interview about his campaign, Wright said that some of the RRC's rules are "very antiquated, easily misunderstood, and unclear."[8] Wright said that he decided to run for railroad commissioner because of his experience with the commission in the private sector and as a landowner.[9]

After Wright won the election and joined the commission, his office revived his old waste industry task force.[10] Its seven members include Commissioner Christi Craddick's ex-spokesperson, who became an energy lobbyist, and representatives of two oil and gas companies that gave Wright's campaign $10,000 or more.[11]

Wright expressed discomfort during his primary campaign with taking money from the oil and gas industry.[12] Post-primary, that industry supplied most of the $1.5 million that Wright raised to defeat his well-funded opponent. Wright later said he would recuse himself from commission matters only when a donor gave him money "directly before" a commission vote.[13]

At his first formal commission meeting, Wright and his colleagues reissued deregulatory orders that relax industry rules and fees—including those governing Wright's waste industry.[14] In his journey from regulated to regulator, Wright also voted to authorize his agency to lower its enforcement penalties—three years after agreeing to pay a $181,519 commission fine for one of his company's own violations.[15]

At his second commission meeting, Wright recused himself from a waste disposal well application filed by his third largest campaign contributor. He said he abstained from that vote not because NGL Water Solutions gave him $76,000 but because his staff general counsel had worked on that NGL matter in private practice before Wright hired him.[16]

Wright and his two commission colleagues renewed permits in April 2021 for a Blackhorn Environmental waste facility that had committed repeated violations and received multiple public health complaints.[17] While that case was pending the previous September, Blackhorn officials had contributed $3,000 to then-candidate Wright,[18] whose own companies had disposed of 60 loads of oil-based mud at Blackhorn's facility.[19] Failing to mention these ties, Wright voted to renew Blackhorn's permits.[20] His agency indefinitely suspended that facility six weeks later, alleging violations that include taking more than 1.2 million gallons of "spent chemical" waste that Blackhorn was not permitted to accept (that waste did not come from Wright's companies).[21] Blackhorn denied the allegationsand has continued operating as it contests the agency's proposed permit suspension.[22]

The state's tolerance of substantial campaign contributions and personal financial interests, combined with poor enforcement of recusal rules, undermines the commission's mission—to the detriment of natural resources and the environment, personal and community safety, and economic vitality for the benefit of Texans.

The following policy solutions would help the agency achieve its mission, renew confidence in the electoral process, and bolster public trust in an agency that oversees one of Texas' most important industries.

1. **Demonstrate no financial interest:** Before serving, commissioners should be required to divest from the industries they regulate. Individuals who own companies regulated by the commission should not be allowed to serve as commissioners. As in Oklahoma,[23] commissioners overseeing the oil and gas industry should divest from oil and gas interests to safeguard the public trust.
2. **Limit campaign contributions:** RRC candidate fundraising should be limited to the 18-month period preceding that election. Parties with upcoming contested case hearings should not be allowed to contribute to commission campaigns. Contributions should be limited to $5,000 per election cycle. Recusals should be triggered if a commissioner received more than $1,000 from a company in the candidate's last election cycle.
3. **Improve financial disclosure:** Texas should increase the upper range of financial disclosures for RRC candidates and elected commissioners to match congressional disclosure requirements. In Texas, the current maximum disclosure option is "$44,630 or more." Financial disclosure forms also should specify whether reported incomes come from interest, dividends, royalties or rents.
4. **Strengthen recusal standards:** Commissioners should recuse themselves from cases involving a company in which they hold equity, income, or business or if the company donated more than $1,000 to their campaign in the last election cycle. The state legislature should clarify and better enforce conflict of interest policies. There should be no exemption from recusal for business owners who have an interest that is the same as "all others similarly engaged in the profession, trade, or occupation."
5. **Use a neutral forum for contested cases:** The commission should conduct independent hearings through the State Office of Administrative Hearings for contested enforcement cases and gas utility cases. Currently, Railroad Commissioners approve administrative law judges' hiring and compensation, which may encourage administrative law judges to favor parties that have financial ties to commissioners.[24]

Notes

[1] 16 TAC §1.10
[2] Texas Government Code Sec. 572.058(f)
[3] Texas Ethics Commission, CorporationWiki
[4] See bio for Grant Chambless on https://www.greenergyusa.com/about also see Homepage, under "projects." Accessed on August 23, 2021. https://www.greenergyusa.com/
[5] Texas Ethics Commission. (2021). Form PFS-TEC, Personal Financial Statement. https://www.ethics.state.tx.us/data/forms/pfs/e_pfs21-TEC.pdf
[6] U.S. House of Representatives. Ethics in Government Act Financial Disclosure Statement. Financial Disclosure Form B CY 2020. Accessed on: July 5, 2021. Retrieved from: https://ethics.house.gov/sites/ethics.house.gov/files/documents/Financial%20Disclosure%20Form%20B%20CY%202020%20FINAL.pdf
[7] See Wright's testimony before the House Energy Resources Committee on House Bill 4380 on April 8, 2019
[8] Brad Johnson, March 5, 2020, "Anatomy of an Upset: Jim Wright on His Shocking Victory Over Ryan Sitton for Texas Railroad Commissioner," The Texan, https://thetexan.news/anatomy-of-an-upset-jim-wright-on-his-shocking-victory-over-ryan-sitton-for-texas-railroad-commissioner/
[9] Id.
[10] In his first three months in office, Wright's calendar showed monthly meetings on the task force or Rule 8. The first meeting, seven days after his swearing in on January 7, was a Rule 8 meeting with staff. It was followed by an "Environmental Task Force" meeting February 4 and a Rule 8 meeting with Texas Pacific Land on February 8.
[11] Agency records document a new Regulatory Advisory Task Force kick-off meeting on March 4. Oilfield Water Logistics gave Wright's campaign $20,000; Pioneer Natural Resources gave him $10,000. See Transparency USA. (2021). James Wright - Texas Candidate - 2015 to 2021. https://www.transparencyusa.org/tx/candidate/jim-wright/donors?cycle=2015-to-now&page=2
[12] Brad Johnson. (2020, March 5). "Wright also made it a point to not take campaign dollars from anyone who could influence his decisions on the RRC. 'I don't want to feel obligated, or for [special interests] to feel I'm obligated, [to act in such a way] that would compromise my decisions.'"
[13] Asher Price. (2021, July 18). Oil-and-gas money flows to Railroad Commission nominee. Austin American Statesman. https://www.gosanangelo.com/story/money/industries/energy/2020/07/18/oil-and-gas-money-flows-railroad-commission-nominee/5460983002/
[14] Railroad Commission of Texas. Open Meeting on January 6, 2021. Item 1.
[15] DeWitt Recyclable Products LLC settlement with the Railroad Commission. November 2017.
[16] Commissioner Wright's recusal statement occurs around 6:30 minutes into the recorded meeting. Railroad Commission of Texas. (2021). Open Meeting. In Admin Monitor - Webcast Archives. http://www.adminmonitor.com/tx/rrc/open_meeting/20210126/
[17] Permit renewed at the April 13, 2021 RRC Open Meeting. Also see TCEQ Investigation Reports 1671827 and 1701401.
[18] Blackhorn's donors were William Cocke, Joe DeBellas, and Matthew Mosser.
[19] "Waste Received Quarterly Reports" that Blackhorn Waste Disposal Facility STF-059 filed with the Texas Ethics Commission, obtained through an Open Records request to the agency.
[20] Railroad Commission of Texas. April 13, 2021. Open Meeting. Agenda item 4, timestamp: 7:00. Retrieved from: http://www.adminmonitor.com/tx/rrc/open_meeting/20210413/
[21] Railroad Commission "Permit Suspension, Notice of Violation (NOV) 3," signed by Technical Permitting Section Assistant Director Paul Dubois, June 4, 2021.
[22] KRIS 6 News Corpus Christi. (2021, June 4). Blackhorn Environmental Services permit in jeopardy. https://www.kristv.com/news/6-investigates/blackhorn-environmental-services-permit-suspended
[23] 17 OK Stat § 17-179
[24] Sunset Advisory Commission. (2017). Sunset Advisory Commission Staff Report with Final Results: Railroad Commission of Texas. https://www.sunset.texas.gov/reviews-and-reports/agencies/railroad-commission-texas