Senate Journal

First Extraordinary Session of the Forty-ninth Legislature
of the State of Oklahoma
Second Legislative Day, Tuesday, September 14, 2004

The Senate was called to order by Senator Rozell.

Roll Call:

Present: Aldridge, Branan, Brogdon, Cain, Capps, Coates, Coffee, Corn, Crutchfield, Dunlap, Easley, Fair, Fisher, Ford, Gumm, Harrison, Helton, Horner, Johnson, Kerr, Laster, Laughlin, Lawler, Leftwich, Lerblance, Littlefield, Maddox, Milacek, Monson, Morgan, Myers, Nichols, Price, Pruitt, Rabon, Reynolds, Riley, Robinson, Rozell, Shurden, Smith, Snyder, Taylor, Wilcoxson, Wilkerson, Williams and Williamson.—47.

Excused: Hobson.—1.

Senator Rozell declared a quorum present.

The prayer was offered by Senator Bruce Price.

HOUSE COMMITTEE RECEIVED

The Sergeant-at-arms of the Senate was recognized and announced that a Committee from the Honorable House was present.

Senator Fisher moved that the Committee, constituting the Board of Managers of the House of Representatives, composed of Representatives Davis, Ferguson, Morgan (Fred), Carey, Langmacher and Roberts, be received to present Articles of Impeachment against Carroll Fisher, State Insurance Commissioner, which motion was declared adopted.

Representative Davis presented the Articles of Impeachment against Carroll Fisher, State Insurance Commissioner. Senator Rozell asked that the Articles of Impeachment be read by the Clerk of the Senate, which was the order.

The message from the House of Representatives and the attached Articles of Impeachment were read as follows:

MESSAGE FROM THE HOUSE

Advising that pursuant to 51 O.S. 2001, Sec. 58, and in accordance with HR 1003x, Speaker Adair has appointed the following Board of Managers to prosecute the impeachment charges against Insurance Commissioner Carroll Fisher – Davis (Chairman), Carey, Ferguson, Langmacher, Morgan (Fred), and Roberts.

Attached herewith are the Articles of Impeachment and on behalf of the House of Representatives, through its Board of Managers, we the Board the Managers do hereby request that the Articles of Impeachment be laid before the Honorable Senate and presented therewith.

Board of Managers
By Frank Davis, Chairman

Respectfully,
Larry Warden, Chief Clerk

ARTICLES OF IMPEACHMENT

Carroll Fisher was elected to the Office of Insurance Commissioner for the State of Oklahoma in 1998 and again in 2002, and he took the following oath of office required by Section 1 of Article XV of the Oklahoma Constitution:

"I, _____, do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the Constitution of the State of Oklahoma, and that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law; I further swear (or affirm) that I will faithfully discharge my duties as _____ to the best of my ability."

While in office as Insurance Commissioner of the State of Oklahoma, Carroll Fisher, unmindful of his oath of office, and in violation of the Constitution and the laws of this state, has been guilty of willful neglect of duty, incompetency, and corruption in office. The House of Representatives hereby exhibits and presents to the Honorable Senate of the State of Oklahoma, Articles of Impeachment against Carroll Fisher, Insurance Commissioner, for cause, and upon grounds, and in particular as follows, to wit:

ARTICLE I

That 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 willful neglect of duty and incompetency.

ARTICLE II

That Carroll Fisher, while acting in his official capacity as Insurance Commissioner, improperly solicited monies for a charity he established from entities he regulates. This conduct exhibits a continuing pattern of activity which constitutes the impeachable offenses of incompetency and corruption in office.

ARTICLE III

That 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. 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 willful neglect of duty and corruption in office.

ARTICLE IV

That a "Form A" application by an entity controlled by the 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 refiled 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 Twenty Thousand Dollars ($20,000.00) 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 an entity controlled by 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.

ARTICLE V

That Carroll Fisher, while acting in his official capacity as Insurance Commissioner, received a one-thousand-dollar 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.

RESOLUTION

Upon request of Senator Laster, **SR 1** was introduced and placed on First Reading and read at length as follows:

SR 1 – By Laster.

A Resolution relating to impeachment proceedings; providing that Articles of Impeachment against Insurance Commissioner Carroll Fisher be received and ordered

filed with the Secretary of the Senate for preservation; advising the House of Representatives of such action; and directing that the Board of Managers of the House of Representatives and Insurance Commissioner Carroll Fisher be served with due notice of further proceedings.

WHEREAS, the House of Representatives has advised the Senate that the Honorable House has sustained Articles of Impeachment against Carroll Fisher, Insurance Commissioner; and

WHEREAS, the Articles of Impeachment have been transmitted to the Senate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE 1ST EXTRAORDINARY SESSION OF THE 49TH OKLAHOMA LEGISLATURE:

THAT the Articles of Impeachment against Carroll Fisher, Insurance Commissioner, be received and filed with the Secretary of the Senate for preservation.

THAT the House of Representatives be advised of this action and that the Board of Managers of the House be served with due notice of further proceedings.

THAT Carroll Fisher, Insurance Commissioner, be served with due notice of further proceedings.

DIRECT TO CALENDAR

SR 1 was referred Direct to the Calendar upon motion of Senator Laster.

GENERAL ORDER

SR 1 by Laster was called up for consideration.

SR 1 was adopted upon motion of Senator Laster and referred for enrollment.

Senator Rozell advised the Board of Managers and the Senate that, pursuant to **SR 1**, the Articles of Impeachment had been duly filed with the Secretary of the Senate and received by the Senate; and that the Board of Managers and the State Insurance Commissioner, Carroll Fisher, shall be served with due notice of further proceedings.

RESOLUTION

Upon request of Senator Laster, **SR 2** was introduced and placed on First Reading and read at length as follows:

SR 2 – By Laster.

A Resolution prescribing and adopting rules of procedure for the Senate when sitting as a court of impeachment with respect to Articles of Impeachment against Insurance Commissioner Carroll Fisher.

WHEREAS, Articles of Impeachment against Carroll Fisher, Insurance Commissioner, have been received and filed with the Secretary of the Senate; and

WHEREAS, Section 71 of Title 51 of the Oklahoma Statutes grants to the Senate the power, when sitting as a court of impeachment, to “prescribe and adopt such rules of procedure as it may deem expedient for the orderly trial of the impeachment cases”; and

WHEREAS, the purpose of this resolution is to prescribe and adopt such rules.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE 1ST EXTRAORDINARY SESSION OF THE 49TH OKLAHOMA LEGISLATURE:

THAT when sitting as a court of impeachment with respect to the Articles of Impeachment against Carroll Fisher, Insurance Commissioner, that have been presented to the Senate of the 49th Oklahoma Legislature, the Senate hereby prescribes and adopts the following rules of procedure:

SECTION 1. When the Senate shall receive notice from the House of Representatives that Managers are appointed on its part to conduct a trial of impeachment against any person and are directed to carry Articles of Impeachment to the Senate, the Secretary of the Senate shall immediately inform the House of Representatives that the Senate is ready to receive the Managers for the purpose of exhibiting such Articles of Impeachment, agreeable to such notice.

SECTION 2. When the Managers of an Impeachment shall be introduced at the Bar of the Senate and shall signify that they are ready to present Articles of Impeachment against any person, the Presiding Officer of the Senate shall direct the Sergeant-at-Arms to make proclamation that, "The Managers of the Honorable House of Representatives are present to present Articles of Impeachment against Carroll Fisher", after which the Articles shall be presented, and then the Presiding Officer of the Senate shall inform the Managers that the Senate will take proper action on the subject of impeachment, of which due notice shall be given to the House of Representatives.

SECTION 3. Upon such Articles being presented to the Senate, the Senate shall, within ten (10) days thereafter, organize as a Court of Impeachment for the trial of the person or persons accused. At an hour of a day fixed by the Senate, the Senate shall organize as a Court of Impeachment, and before proceeding to the consideration of the Articles of Impeachment, the Presiding Officer shall administer or order the Clerk of the Court to administer the oath hereinafter provided to the Members of the Senate then present and the other Members of the Senate as they, from time to time, shall appear.

SECTION 4. The Court of Impeachment shall be presided over by the Chief Justice, or, if the Chief Justice is absent or disqualified, then one of the Associate Justices of the Supreme Court, to be selected by it, except in cases where all of the Members of said Court are absent or disqualified, or in cases of impeachment of any Justice of the Supreme Court, then the Senate shall elect one of its own Members as Presiding Officer for such purpose. The House of Representatives shall present all impeachments.

SECTION 5. Upon adoption of these Rules and while the Senate is sitting as a Court of Impeachment, the Sergeant-at-Arms shall be the Marshal of the Court and all Assistant Sergeants-at-Arms as named by the Court shall be Assistant Marshals and as such shall exercise all powers and obligations of such office as authorized by these Rules.

SECTION 6. The Marshal of the Court shall direct all necessary preparations in the Senate Chamber, and the Presiding Officer shall prescribe the forms of process for the enforcement of the orders and judgment of the Court of Impeachment.

SECTION 7. Upon the adoption of these Rules and while the Senate is sitting as a Court of Impeachment, the Secretary of the Senate shall be the Clerk of the Court of Impeachment, and as such shall exercise all powers and obligations of such officer as authorized by these Rules. The General Counsel of the Senate shall be the Administrative Legal Aide of the Court of Impeachment and the Assistant Secretary of the Senate shall be the Assistant Clerk of the Court of Impeachment. Upon the adoption of these Rules and while the Senate is sitting as a Court of Impeachment, the Chief Clerk and the Senate Journal Clerks shall be the Journal Clerks of the Court of Impeachment. The Presiding Officer may administer all oaths prescribed by these Rules.

SECTION 8. The Journal Clerks of the Court shall cause a record of the proceedings in cases of impeachment to be kept in a special journal, which shall be examined and approved by the Presiding Officer of the Court.

SECTION 9. The President Pro Tempore of the Senate, the Majority Floor Leader of the Senate, or the designee of either, is hereby authorized by the Court of Impeachment to employ court reporters and all other personnel necessary to properly carry out the duties and functions of the Court of Impeachment.

SECTION 10. Upon the presentation of Articles of Impeachment and the organization of the Senate as a Court of Impeachment, as hereinbefore provided, a writ of summons shall issue to the Accused, with a copy of said Articles, notifying the Accused to appear before the Court of Impeachment on a date and time certain, and at a place to be fixed by the Court and named in such writ, and file an answer or plea to such Articles of Impeachment, and to stand to and abide the orders of the Court of Impeachment thereon; which writ shall be served by the Marshal or the Marshal's assistant, and due return thereof made such number of days prior to the day fixed for such appearance as shall be named in such summons, either by the delivery of an attested copy thereof to the person accused, or, if that cannot be conveniently done, by leaving such copy at the last known place of abode of such person, with some member of his or her family over sixteen years of age. If the

Accused, after service, shall fail to appear, either in person or by attorney, on the day so fixed therefor as aforesaid, or, appearing, shall fail to file a plea or answer to such Articles of Impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty. If a plea of guilty shall be entered, judgment may be entered thereon without further proceedings.

SECTION 11. At the time fixed on the day appointed for the return of the summons against the person impeached, the Clerk of said Court shall administer an oath to the returning officer substantially in the form following, viz:

"I, _____, do solemnly swear (or affirm) that the return made by me upon the process issued on the _____ day of _____, 2004, by the Senate of the State of Oklahoma, organized as a Court of Impeachment, against Carroll Fisher, is truly made, and that I have performed such service as therein described", which oath shall be entered in the record.

SECTION 12. The person impeached shall then be called to appear and answer to the Articles of Impeachment. If the person appears, or an attorney appears for the person, the appearance shall be recorded, stating particularly if by self, or by attorney, naming the person appearing, and the capacity in which the person appears. If the person does not appear, either in person or by attorney, the same shall be so recorded.

SECTION 13. The hour of the day at which the Court shall sit upon the trial of an impeachment shall be fixed by the Court, either by general order or by motion from day to day; and when the hour for such sitting shall arrive, the Presiding Officer of the Court shall so announce, and shall cause proclamation to be made of the opening of such Court, and the business of the trial shall proceed. The adjournment of the Senate sitting in said trial as a Court of Impeachment, or of the legislative session, shall not operate as an adjournment of the Court; but on such adjournment the Court shall continue the consideration of such impeachment proceedings from day to day or to any further date until the final conclusion thereof.

SECTION 14. The Presiding Officer shall have the power to make all orders and mandates and to direct the Clerk of such Court to issue all writs and process authorized by these Rules, or by the Court of Impeachment and to administer oaths. The Presiding Officer shall have the power to conduct such pretrial conferences and make such orders and directions therein as may be necessary or useful in simplifying and streamlining the trial of impeachment. The Board of Managers and the defendant shall be represented at all pretrial conferences ordered by the Presiding Officer. The Presiding Officer may make and enforce such other regulations and orders in the premises as the Court may authorize or provide.

SECTION 15. The Court of Impeachment shall have power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, process and judgments, to preserve order, and to punish in a summary way contempts of, and disobedience to, its authority, orders, mandates, writs, precepts or judgments, and to make all lawful orders, rules and regulations which it may deem essential or conducive to the ends of justice. The Marshal of the Court, under the direction of the Court of Impeachment, may employ such

aid and assistance as may be necessary to enforce, execute and carry into effect the lawful orders, mandates, writs and precepts of the Court.

SECTION 16. The following forms shall be used as indicated:

Form for swearing in witnesses:

"You do solemnly swear (or affirm) that the evidence you shall give in the impeachment trial now pending shall be the truth, the whole truth, and nothing but the truth; so help you God." This oath shall be administered by the Clerk of the Court or the Presiding Officer.

Form of subpoena to be issued on the application of the Board of Managers or of the party impeached, or counsel for the party impeached:

"To _____, Greetings:

You and each of you are hereby commanded to appear before the Senate of the State of Oklahoma sitting as a Court of Impeachment at the hour of _____ o'clock __.m. on the _____ day of _____, 2004, at the Senate Chamber in the City of Oklahoma City, then and there to testify in the cause which is before such Court in which the House of Representatives has impeached Carroll Fisher and remain in attendance from day to day until discharged by this Court.

FAIL NOT.

Done by direction of Chief Justice Joseph M. Watt, Presiding Officer of the Court of Impeachment, at the City of Oklahoma City, this _____ day of _____, 2004.

_____
Clerk of the Court of Impeachment"

Form of direction of the service of said subpoena:

"The Court of Impeachment of the State of Oklahoma to _____, Greetings:

You are hereby commanded to serve and return the attached subpoena according to law.

Dated at Oklahoma City, this _____day of _____, 2004.

_____
Clerk of the Court of Impeachment"

Form of oath to be administered to the members of the Senate sitting in the trial of impeachment:

"I do solemnly swear (or affirm) that I will faithfully and impartially try the impeachment against Carroll Fisher and do justice according to the law and the evidence."

Form of summons to be issued and served upon the person impeached:

"The State of Oklahoma,
The Court of Impeachment of the State of Oklahoma, ss:

To _____, Greetings:

Whereas, the House of Representatives of the State of Oklahoma did, on the 14th day of September, 2004, present to the Senate Articles of Impeachment against you, the said Carroll Fisher, a true copy of which Articles of Impeachment are attached hereto, and demand that you, the said Carroll Fisher, should be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials and judgments might be thereupon had as are agreeable to law and justice:

You, the said Carroll Fisher, are therefore hereby summoned to be and appear before the Senate of the State of Oklahoma, sitting as a Court of Impeachment at the Senate Chamber in the City of Oklahoma City, on the ____ day of _____, 2004, at _____ o'clock __.m., and then and there to answer or plead to the Articles of Impeachment, to abide by, obey and perform such orders, directions and judgments as the Court shall make in the premises according to the Constitution and Laws of the State of Oklahoma.

HEREOF, YOU ARE NOT TO FAIL.

Done by direction of _____, Presiding Officer of the said Court, at the City of Oklahoma City, this _____ day of _____, 2004.

_____
Clerk of the Court of Impeachment"

Form of direction of the service to be endorsed on said writ of summons:

"The State of Oklahoma, ss:
The Court of Impeachment of the State of Oklahoma, to _____,

Greetings:

You are hereby commanded to deliver to and leave with _____, if conveniently found, or if not, to leave at this person's usual place of abode with some member of this person's family over sixteen years of age, a true and attested copy of the within writ of summons, together with a true copy of the Articles of Impeachment and in

whichsoever way you perform the service, let it be done on or before the _____ day of _____, 2004.

Fail not, and make return of this writ of summons, with your proceedings thereon endorsed, on or before the appearance day mentioned in the said writ of summons.

Done by direction of _____ , Presiding Officer of the said Court, at the City of Oklahoma City, this ____ day of _____, 2004.

_____
Clerk of the Court of Impeachment.

Form of oath to be administered to officers of the Court of Impeachment:

"I, _____, do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States, and the Constitution of the State of Oklahoma, and that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law; I further swear (or affirm) that I will faithfully discharge the duties of my office to the best of my ability."

Substantial compliance with the forms prescribed in this section shall suffice. All process shall be served by the Marshal of the Court or the Marshal's assistants or by any sheriff or deputy sheriff of this state, unless otherwise ordered by the Court.

SECTION 17. If the Court of Impeachment shall at any time fail to sit for the consideration of Articles of Impeachment on the day or hour fixed therefor, such Court may, when reconvened, continue the proceedings without debate, or may fix a day and hour for resuming such consideration, and such Court may adjourn its sessions and the proceedings before it to such dates as may suit its convenience or serve the ends of justice.

SECTION 18. Any person before the Court who shall file or present for filing any pleadings, or who shall make any statement or remark, designed in disrespect toward, or in contempt of the Court or any Members thereof, may be deemed guilty of contempt of Court and may be expelled from the courtroom and otherwise punished, as the Court may direct.

SECTION 19. During any session of the Court no Member of the Court shall be permitted to engage in any conduct which would be detrimental to perfect decorum in the Senate Chamber. The Marshal is authorized and empowered to enforce proper rules of order and decorum on the part of visitors and spectators. Visitors and spectators may be permitted to enter the gallery and to depart at pleasure, so long as they do not disturb the Court or any of its Members. The Marshal may, upon the order of the Court, remove or refuse admission to any spectator or visitor.

SECTION 20. While the Senate is sitting as a Court of Impeachment, access to the lower floor of the Senate Chamber shall be denied to all persons, except Members and

Officers of the Court, Senate employees designated by the President Pro Tempore of the Senate or the Majority Floor Leader of the Senate, House Managers, the Accused and his or her counsel and witnesses. Representatives of the news media will be permitted in the section reserved for their use. No person shall be permitted to use cellular telephones, laptop computers, flash bulbs, lights or other illuminating devices in the Senate Chamber or Galleries, and any other equipment tending to disturb the decorum of the Court may be prohibited upon order of the Court.

SECTION 21. Counsel for the parties shall be admitted to appear and be heard upon an impeachment as upon the trial of a cause in the courts of the State.

SECTION 22. All motions made by the parties or their counsel shall be addressed to the Presiding Officer, and if the Presiding Officer shall require, such motion or motions shall be committed to writing and read at the Clerk's table.

SECTION 23. The Presiding Officer, either by his or her own motion or upon request of the Board of Managers or the defendant, may make such orders as are necessary to prevent witnesses from hearing the testimony of other witnesses in the manner provided in Section 2615 of Title 12 of the Oklahoma Statutes.

SECTION 24. Witnesses shall be examined by one person on behalf of the party introducing them, and then cross-examined by one person on the other side, unless the Presiding Officer of the Court shall otherwise order.

SECTION 25. No Member of the Court of Impeachment shall be called as a witness by either party.

SECTION 26. In the trial of impeachment charges, the rules governing the admissibility of evidence, and the order of trial, commencing with the opening statement of counsel, shall be the same as is prescribed and recognized by the courts in the trial of criminal proceedings in this State, except as may be otherwise provided by these Rules or by order of the Court. The Court may, by specific ruling, receive as evidence any matter considered by the Court to be germane and material to the proceedings. Provided, testimony of all witnesses shall be given in the Senate Chamber in the presence of the Senate sitting as a Court of Impeachment. The rules of evidence prohibiting the admission of hearsay evidence shall prevail and shall be interpreted in accordance with the rules of evidence applicable to judicial proceedings in the State of Oklahoma.

SECTION 27. If a Member of the Court wishes a question to be put to a witness, or to offer a motion or order (except a motion to adjourn), it shall be reduced to writing and put by the Presiding Officer.

SECTION 28. Any motions which would go to the merits of the case or would have the effect of terminating the case shall be ruled upon by a vote of the Members of the Court. Except as otherwise provided in these rules, the Presiding Officer shall decide all other motions, questions of evidence, or other incidental matters arising during such proceedings.

Provided, however, that any Member of the Court, any Member of the Board of Managers, or the Accused or the attorney for the Accused, may take exception to any ruling of the Presiding Officer, and if any such exception is accompanied by a request for ruling by the entire membership of the Court, the question shall be put to the Court for ruling thereon if the exception and request for ruling is supported by ten (10) or more Members of the Court. In the event the question on any controverted ruling is put to the Court, the same shall be by roll call vote. It is further provided that the Presiding Officer may allow an equal amount of time to the Board of Managers and the Accused or the attorney for the Accused, for argument thereon.

SECTION 29. All questions and all motions shall be argued for not exceeding five (5) minutes on each side, unless the Presiding Officer shall, by order, extend the time.

SECTION 30. All orders and decisions of the Presiding Officer shall be made without debate by any Member of the Court of Impeachment except when the doors shall be closed and, in that case, no Member shall speak more than once on any one question, and for not more than ten (10) minutes on any question unless by unanimous consent. Upon motion in writing presented by any Member of the Court to close the doors and exclude all persons from the presence of the Court, the same shall be considered by the Court and adopted upon a majority vote of those Members of the Court present and voting, or upon the order of the Presiding Officer.

SECTION 31. The case, on each side, shall be opened by one person, as in criminal trials. The final argument on the merits may be made by three persons on each side, unless otherwise ordered by the Presiding Officer, upon application for that purpose, and the argument shall be opened and closed on the part of the House of Representatives by the Board of Managers.

SECTION 32. No Member of the Court of Impeachment shall vote upon any separate Article of Impeachment who has been absent from the trial during the taking of all the testimony of any one witness upon such Article. The question of whether or not any Member of the Court shall be entitled to vote upon any Article of Impeachment may be raised by a Member of the Court only. The Member in question shall be allowed to vote on an Article of Impeachment unless two-thirds of the Members of the Court present shall vote to prohibit the Member from voting on such Article of Impeachment. The decision of the question by a two-thirds majority of the Members of the Court present shall be a final determination of the matter.

SECTION 33. After submission of the case for final determination, the doors shall be closed for deliberation and the Presiding Officer shall preside over the deliberations of the Members of the Court of Impeachment.

SECTION 34. Except on the final question whether the impeachment is sustained or as otherwise provided in these rules, all votes by the membership of the Court shall be determined by a majority of those present and may be by voice vote, unless, prior to the vote, a roll call vote shall have been requested by a member of the court. Once a voice vote

has been taken, the Presiding Officer shall state the side that appears to the Presiding Officer to have prevailed, and any member then may request a division, but shall not be entitled to request a roll call vote.

SECTION 35. On the final question whether the impeachment is sustained, the yeas and nays shall be taken on each Article of Impeachment separately; and, if the impeachment shall not, upon any separate count or charge contained in the Articles, be sustained by the votes of two-thirds of the Members present, a judgment of not guilty shall be entered as to such count; but if the person accused in such Articles of Impeachment shall be convicted upon any separate count or charge of said Articles by the votes of two-thirds of the Members present, the Court shall proceed to pronounce judgment upon such count.

SECTION 36. When the Senate is sitting as a Court of Impeachment, the Senators shall be on oath, or affirmation, impartially to try the party impeached, and no person shall be convicted without the concurrence of two-thirds of the Senators present and voting in open session.

MOTION

Senator Fisher moved that the Chief Justice of the Supreme Court of the State of Oklahoma be notified that the Senate had received Articles of Impeachment against Carroll Fisher, State Insurance Commissioner, and that the Senate desired him to appear and administer the Oath of Office to the members of the Senate as a Court of Impeachment today, September 14, 2004, which motion was declared adopted.

Senator Rozell ordered the Sergeant-at-Arms to notify the Chief Justice of the action taken and the Senate requests his presence in the Senate Chamber.

Senator Laster moved that the Oklahoma State Senate resolve itself into a Court of Impeachment, which motion was declared adopted.

Sergeant-at-Arms Craig announced the arrival of Chief Justice Joseph M. Watt.

Senator Rozell administered the following Oath of Office to Chief Justice Watt:

"I, _____, do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the Constitution of the State of Oklahoma, and that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law; I further swear (or affirm) that I will faithfully discharge my duties of my office to the best of my ability."

The Presiding Officer ordered the roll called of Members of the Court of Impeachment. The roll call resulted as follows:

Present: Aldridge, Branan, Brogdon, Cain, Capps, Coates, Coffee, Corn, Crutchfield, Dunlap, Easley, Fair, Fisher, Ford, Gumm, Harrison, Helton, Horner, Johnson, Kerr, Laster, Laughlin, Lawler, Leftwich, Lerblance, Littlefield, Maddox, Milacek, Monson, Morgan, Myers, Nichols, Price, Pruitt, Rabon, Reynolds, Riley, Robinson, Rozell, Shurden, Smith, Snyder, Taylor, Wilcoxson, Wilkerson, Williams and Williamson.—47.

Excused: Hobson.—1.

The Presiding Officer administered to those Members of the Court who were present the following Oath of Office:

I, _____, do solemnly swear (or affirm) that I will faithfully and impartially try the impeachment against Carroll Fisher, and do justice according to the law and the evidence.

The Presiding Officer declared the Court of Impeachment in order.

DIRECT TO CALENDAR

SR 2 was referred Direct to the Calendar upon motion of Senator Laster.

GENERAL ORDER

SR 2 by Laster was called up for consideration.

SR 2 was adopted upon motion of Senator Laster and referred for enrollment.

MOTION TO SET TRIAL DATE

Senator Fisher moved that the Senate establish September 27, 2004, as the date for the trial of impeachment to begin, which motion was declared adopted.

Pursuant to the Rules of the Senate sitting as a Court of Impeachment, the Presiding Officer administered the Oath of Office to the following Officers of the Court: Secretary of the Senate, Assistant Secretary of the Senate, General Counsel of the Senate, Journal Clerks of the Senate, Chief Sergeant-at-Arms of the Senate and all Assistant Sergeants-at-Arms of the Senate as follows:

"I, _____, do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the Constitution of the State of Oklahoma, and that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than

the compensation allowed by law; I further swear (or affirm) that I will faithfully discharge my duties of my office to the best of my ability."

Pursuant to the Rules of the Senate sitting as a Court of Impeachment, the Presiding Officer ordered that a writ of summons, with a copy of the Articles of Impeachment, be issued to Carroll Fisher notifying him to appear before the Court of Impeachment in the Senate Chamber of the State Capitol on September 27, 2004, to file an answer or plea to such Articles of Impeachment, and to abide by the orders of this Court.

The Presiding Officer further ordered that the Board of Managers of the House of Representatives be furnished with a true copy of the summons and attachments.

REPORT OF ENGROSSED AND ENROLLED MEASURES

SRs 1 and **2** were each correctly enrolled, properly signed and ordered transmitted to the Secretary of State.

Senator Laster moved that the Court of Impeachment stand recessed to convene Monday, September 27, 2004, at 1:30 p.m., which motion was declared adopted.

The Presiding Officer declared the Court of Impeachment recessed until 1:30 p.m. on September 27, 2004.