



Minutes of the March 8, 2021, Meeting of the  
Commission on Governmental Ethics and Election Practices  
45 Memorial Circle, Augusta, Maine

Present: William A. Lee III, Esq., Chair; David R. Hastings, Esq.; Meri N. Lowry; Dennis R. Marble; and William J. Schneider, Esq.

Staff: Jonathan Wayne, Executive Director; Jonathan Bolton, Assistant Attorney General; and Erin Gordon, Candidate Registrar

Commissioner Lee convened the meeting at 9:33 a.m. The meeting was livestreamed via YouTube.

The Commission considered the following items:

**1. Complaint – Disclosure Statements Missing from Roadside Signs in Special Election**

Mr. Lee asked the parties to state for the record that they were agreeable for this matter to be heard today. Joshua Tardy, Esq., on behalf of William Guerrette, and Ted Potter, who filed the complaint, confirmed that they were agreeable to this being heard today.

Mr. Wayne said William Guerrette was a Maine Clean Election Act (MCEA) candidate in the special election for Senate District 14. He said on March 1, the Commission staff received an email from Julia Brown of the Senate Democratic caucus stating that a complaint was going to be filed about four electronic signs being used by William Guerrette that did not have any type of disclosure statement on them. The signs were large electronic signs frequently used for traffic/construction alerts. Erin Gordon, Candidate Registrar, sent an email to Mr. Guerrette to notify him of the possible complaint and that he needed to have a disclosure statement on these signs. Shawn Roderick of the Republican Senate caucus contacted Ms. Gordon to let her know he would put a disclosure statement on the four signs. He also told her that the signs belonged to a construction company that was not currently using the signs and had offered Mr. Guerrette the use of the signs. Ms. Gordon advised Mr. Guerrette and Mr. Roderick that, to avoid this being treated as an in-kind contribution, Mr. Guerrette would need to pay the construction company for the use of the signs. Ted Potter filed a written complaint about the signs on March 2.

Mr. Wayne said most candidates bought commercially made campaign signs and sometimes they forgot to have a disclosure statement printed on the signs. During an election year, the Commission staff received 20-25 calls about missing disclosure statements on campaign signs. Unless a formal complaint was filed, the Commission staff generally handled these issues informally and advised

the candidate how they could remedy the violation by placing a disclosure statement on the signs. The staff considered this to be a step the candidate could take to stop an on-going violation, but it did not alter the fact that a violation had occurred.

Mr. Lee asked if this was the first complaint about an electronic sign. Mr. Wayne said he could not recall ever receiving a similar complaint. Mr. Lee said that although the statute allowed the Commission to take up complaints about missing disclosure statements after the election, the unique facts in this case made it significantly different from the more routine cases that Mr. Wayne mentioned. These signs were very prominent with lettering that was a foot high and were highly visible, especially at night when they were lit up. Mr. Lee said he thought the facts in this case made it sufficiently different from minor violations of missing disclosure statements that the matter should be heard prior to the election.

Mr. Tardy said Mr. Guerrette appreciated the actions of the Commission staff in this matter. He said he was not sure a disclosure statement was necessary but, in order to be in compliance, they had added a disclosure statement to each sign.

Mr. Marble asked why Mr. Tardy did not believe the signs needed a disclosure statement. Mr. Marble said the signs were very visible and prominent at night because they were lit up. He said that made them more valuable than the traditional paper signs. Mr. Tardy said the signs were not rented or purchased. He said he could not recall a similar type of complaint but there had been some discussion in the past about the placement of campaign communications on commercial vehicles. However, he agreed the signs had value to the campaign and that a disclosure statement should have been on the signs; Mr. Roderick had placed one on each sign in order to be in compliance with the staff's directions. He said there was not an easy way to assign a specific value to the use of the signs, but they had assigned a value and would report the expenditure on a campaign finance report.

Mr. Marble asked if Mr. Guerrette had run for office before. Mr. Tardy said he was a former legislator. Mr. Marble said Mr. Roderick, because of his work with the senate caucus, was experienced. Mr. Tardy said that was correct. Mr. Marble asked who got permission for the placement of the signs.

William Guerrette appeared before the Commission. Mr. Guerrette said he owned two of the properties, one property belonged to a person Mr. Guerrette knew and Senator Timberlake had made arrangements for the placement of the fourth sign.

Mr. Hastings asked if the Commission had any oversight on the placement of the signs. Mr. Wayne said it did not. Mr. Hastings said candidates can place signs in the public way for a certain period of time before an election. Mr. Wayne said that was correct.

Mr. Lee asked if Mr. Guerrette had been involved in deciding where to place the signs. Mr. Guerrette said he was asked if he had any good locations to place these signs and he had said he did. Mr. Lee asked how long the signs had been in place. Mr. Guerrette said he thought they had been in place for approximately two and a half weeks. Mr. Lee said having a disclosure statement on campaign signs was a basic requirement and asked why these signs did not have disclosure statements.

Shawn Roderick appeared before the Commission. Mr. Roderick said the construction company that owned the signs had contacted Mr. Guerrette to offer the use of the signs because they wanted to support his campaign. He said the campaign believed there was no value to the signs because the construction company was not charging Mr. Guerrette for their use. He said as soon as the Commission notified them that a disclosure statement was necessary, they had complied.

Mr. Lee said he had a hard time believing there was no value that could be attributed to the use of these electronic signs. He asked if anyone had done any research into the costs of renting one of these signs. Mr. Tardy said he had not.

Mr. Hastings asked if it was the Commission's responsibility to assign a value to these signs. Mr. Lee said the value of the signs became relevant if the Commission determined there was a violation and assessed a penalty. Mr. Wayne said that was correct and that the Commission staff had advised Mr. Guerrette to pay a reasonable amount for the use of the signs to cure the in-kind contribution.

Erin Gordon, Candidate Registrar, said she had forwarded the complaint to Mr. Guerrette and Mr. Roderick. She heard from Mr. Roderick the next day that he had put a disclosure statement on the signs. She said there had been a discussion about the possible value of the signs, but this was a unique situation that did not clearly fit within the statutory definitions. She said she had done some research and found that these signs could be rented, which gave a value range to the signs used by Mr. Guerrette. Based on that information, she had a further discussion with Mr. Roderick about the disclosure statement and what it should contain.

Ted Potter appeared before the Commission. He said he thought the public had a negative perception of politics and that the situation with these signs confirmed that perception. He said he

believed the public wanted more transparency. The fact that there was no disclosure statement on these signs was very misleading because it was unclear who was promoting Mr. Guerrette's campaign.

Mr. Lee said the campaign very quickly corrected the problem by placing a disclosure statement on the signs. Mr. Potter said, unlike a regular campaign sign that had the disclosure statement below the campaign message, these electronic signs did not. He said the disclosure statement affixed to these signs was small, not very legible and not placed in a visible spot.

Ms. Lowry asked about the research into the value of the signs and how Mr. Guerrette had determined what value to place on these signs. Ms. Gordon said she had done an internet search and found similar signs at United Rental, which charged \$400 a week per sign for a full matrix, variable message, solar-powered sign. She said the United Rental signs were likely newer signs, which may mean the signs Mr. Guerrette was using were less valuable. Considering that T. Buck Construction did not rent the signs out in the normal course of business, Ms. Gordon said Mr. Guerrette had been advised to assign a reasonable value to the actual signs used.

Mr. Roderick said the campaign had \$500 in remaining MCEA funds and it had reserved that amount for the signs, but it was unable to obtain an invoice at this time because the owner of the construction company had recently died.

Mr. Lee expressed concern about the impact on the election if the Commission decided this matter today because of the way past decisions had been reported. He asked if the Commissioners wanted to put off making a decision until their March 31 meeting.

Ms. Lowry said she did not think the upcoming election should have any bearing on the Commission deciding this matter today. She said she believed they had all the information they needed to make a decision today.

Mr. Schneider said this was a case of first impression. He said it had probably never occurred to anyone that these signs needed a disclosure statement. When this was brought to the Commission staff's attention, they responded quickly and appropriately; when it was brought to the campaign's attention, the campaign quickly remedied the omission based on the Commission staff's advice. He said he did not believe any further action was necessary.

Mr. Marble said he agreed with Mr. Hastings that the location of the signs was not pertinent to this matter. He said he agreed with Mr. Lee about the effect on public perception, but he also agreed with Ms. Lowry that they had everything they needed to decide this matter today.

Mr. Hastings said the Commission did not hear the majority of disclosure statement violations. He said he shared Mr. Lee's concern about the political and public perception ramifications of making a decision before the election. He said he would agree to postpone deciding this case until the next meeting. He said they did not know the value of the signs and asked if that information would be available by the Commission's next meeting. Mr. Roderick said he thought they might have that information, but the construction company did not rent out these signs, so they did not know what value to place on the signs. Additionally, the construction company's owner had recently died, and the company was dealing with that now.

Ms. Lowry said this matter was different from the usual missing disclosure statement matters because the signs were so different due to their size and visibility because they were lit up at night. She said this was not a de minimus matter and she believed there was a violation. She said it was inevitable there were ramifications as a result of their decisions and that it helped to create more sensitivity around campaign finance laws. She said she believed assessing a penalty between \$50-\$100 would be appropriate. Ms. Lowry said she did not believe additional information would change that this was a violation; additional information would only affect the amount of the penalty.

Ms. Lowry said she would be offended if, out of a politeness, the Commission did not decide this matter today. She said they had not extended that courtesy to others in the past and they should not do so in this matter. Mr. Lee said he was trying to keep the Commission out of the political process by postponing the decision until March 31. He said there was no legal requirement for the Commission to make a decision today and expressed concern about bifurcating the matter. Ms. Lowry said all their decisions were made within a political arena and potential public perception should not affect their ability to make a decision. Mr. Lee said he wanted more information before making a decision. Ms. Lowry asked Mr. Wayne about past Commission decisions that were made close to an election. Mr. Wayne said the Commission had made decisions on matters just before an election and it had also delayed making a decision on a matter until after the election.

Mr. Marble said these were not typical campaign signs and he thought the disclosure statement should have been handled differently. He said he agreed with Ms. Lowry that there was a violation

and he did not believe there should be a large penalty. He said he also shared Ms. Lowry's concern about their delaying to make a decision because of public perception.

Mr. Schneider said he did not agree with Ms. Lowry's view that the signs' effectiveness should be a factor in the Commission's decision. He said there was nothing to distinguish this matter from the 20-30 other instances the Commission staff informally handled. In this instance, the Commission staff worked efficiently and effectively with the campaign to make sure the law was complied with and that the public had the information it was entitled to.

Mr. Hastings said he did believe there was a violation. There should have been a disclosure statement. But the statute gave the Commission discretion as to whether to impose a penalty. He said he agreed with Mr. Schneider that the size of the sign did not matter and that this was no different from any other disclosure violation matter. He said he would vote to find a violation, but he did not believe there should be a penalty.

In response to a question from Mr. Lee, Mr. Wayne said the reason this case was before the Commission was because Mr. Potter filed a formal complaint. Once a complaint had been filed, the matter was in the Commission's hands to decide how to resolve the complaint.

Mr. Lee made a motion that they find a violation of 21-A MRS § 1014(1) in that the four electronic signs did not have the required statement who authorized the message itself. Mr. Marble seconded the motion. Mr. Lee withdrew this motion.

Mr. Wayne said § 1014(1) required two pieces of information to be disclosed on campaign communications: who made or financed the expenditure and whether the candidate authorized it. He suggested that the motion should refer to both elements of the requirement.

Mr. Lee made a motion to find that these four signs violated 21-A MRS § 1014(1) in that they did not state they were authorized by the candidate and they did not state who made or financed the expenditure for the communication. Mr. Marble seconded the motion. Motion passed 4-1 (Mr. Schneider opposed).

Mr. Hastings made a motion that, in light of the fact that the person who financed the communication corrected the violation immediately, not just within 10 days, but immediately upon receiving notification of the violation, that the Commission assess no civil penalty. Mr. Lee seconded the motion. Motion passed 4-1 (Ms. Lowry opposed).

## **2. Maine First Project – Request to Rebut Independent Expenditure Presumption**

Mr. Wayne said communications sent out within the last 35 days before a special election that name or depict a candidate were presumed to be independent expenditures (IEs). On March 1, the Maine First Project mailed a communication that listed the names of both candidates in the special election. The mailing urged voters to contact the candidates about public education in the district. Maine First Project said this was not an IE because it did not advocate for or against either candidate. Mr. Wayne said a similar matter regarding a communication by Maine First Project was raised during the general election and the Commission found that Maine First Project had rebutted the presumption.

Lawrence Lockman of the Maine First Project appeared before the Commission.

Mr. Lee made a motion to find that the communication that was disseminated by Maine First Project was not made with the intent to influence the election of a candidate for public office. Mr. Hastings seconded the motion. Motion passed 5-0.

### **Adjournment**

Ms. Lowry made a motion, seconded by Mr. Marble, to adjourn. The motion passed. The meeting adjourned at 12:10 p.m.

Respectfully submitted,  
/s/ Jonathan Wayne  
Jonathan Wayne, Executive Director