



Minutes of the October 25, 2023 Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: William Schneider, Esq., Chair; Dennis Marble; David Hastings, Esq.; Stacey Neumann, Esq.; and Sarah LeClaire, Esq. (by Zoom)

Staff: Jonathan Wayne, Executive Director; and Jonathan R. Bolton, Assistant Attorney General
Commissioner Schneider convened the meeting at 9:00 a.m.

1. Ratification of the Minutes of the August 23, 2023 Meeting

Mr. Marble moved to ratify the August 23, 2023 minutes. Ms. Neumann seconded the motion. The motion passed 5-0.

2. Request for Investigation – Hon. Troy D. Jackson

On August 29, 2023, State Rep. John Andrews requested an investigation to determine if Sen. Troy Jackson submitted a false address in candidate filings to the Commission and violated the requirement that he reside in Senate District 1. In September 2019, Sen. Jackson and his partner had purchased a property in Augusta. In a preliminary response to the Commission, Sen. Jackson described the property as a place to stay while carrying out his public duties as State Senator and President of the Maine Senate. His home in Allagash is roughly 300 miles from Augusta. Sen. Jackson sold the Augusta property in December 2021.

As part of obtaining a loan insured by the Federal Housing Authority (FHA), Sen. Jackson signed a security instrument indicating he would use the Augusta property as his “principal residence” for one year upon occupying the property. Rep. Andrews asked the Commission, in light of this document, to investigate whether the Allagash address used by Sen. Jackson in filings with the Commission was false.

Mr. Schneider explained the Commission’s jurisdiction was limited to legislative ethics questions, campaign finance-related issues, and running a campaign. The Commission does not have the authority to examine whether a Senator is properly a member of the Senate, as that body oversees the qualifications of its members pursuant to the State Constitution.

Rep. Andrews said he filed the complaint because Sen. Jackson had made a declaration that he would live in Augusta while representing the state's northernmost senate district, which is not in congruence with the residency requirements. Sen. Jackson declared in writing in front of a notary the Augusta home would be his principal residence for one year, in order to obtain the FHA loan. Rep. Andrews said Sen. Jackson could not have both Augusta and Allagash as his primary residences and still fulfill the state constitutional residency requirement. He also stated Sen. Jackson's legislative expenses for reimbursement had increased since declaring Augusta as his primary residence and expressed concern that Sen. Jackson had signed off on his own reimbursements with no need for receipts.

Mr. Bolton summarized advice by the Office of the Attorney General with respect to residency for purposes of being a candidate. Objective factors are relevant (where the candidate's car is registered, the address on their driver's license, etc.), along with the candidate's intent to return to a particular property. The Attorney General's office has advised this is not an exact science. A forum would need to look at the different factors and put together a picture. When a candidate registers to run for an office with the Secretary of State, they file a consent form to certify they have met the qualifications for the office. A candidate's qualifications, including their residency, can be challenged with the Secretary of State but that did not happen in this case.

Sen. Jackson said he is a lifelong resident of Aroostook County who is entering his 20th year in the Legislature. He stated Allagash is his home, where he lives and votes, and where his children grew up. Allagash is listed on his hunting and fishing licenses, and where he receives his homestead property exemption. It is where he is going to go back in the future. He explained being Senate President requires him to spend considerable time in Augusta, and, with housing rates increasing, purchasing a home in Augusta made sense. He hired a realtor, who recommended a mortgage broker, and the conversation was where do you spend most of your time and he answered Augusta, which he stated was accurate. His residence is in Allagash, but he had just come out of an eight-month session, so he had in fact spent the majority of his time in Augusta.

Retired Maine Justice Donald Alexander accompanied Sen. Jackson and said, looking at the law, the residence of a candidate for a legislative district is the home to which the candidate intends to return, whenever temporarily absent. The people who assisted Sen. Jackson with the FHA loan were aware he was a Senator, knew his residence as defined in the law was Allagash and when they arrived at the point of the loan where he was asked where he spent the majority of his time,

answering Augusta was a correct statement. Sen. Jackson added that when he filed his taxes after selling the Augusta home, he paid capital gains taxes because he viewed it as his second home.

When asked about which campaign finance compliance issues were at issue, Mr. Wayne responded that the staff had focused on whether Sen. Jackson had provided a false address when registering as a candidate in 2020. Mr. Schneider stated the Commission should focus on legislative ethics, campaign activity and campaign finance and not with qualifications to be a Senator. Some potential items in the Commission's purview would be accepting clean election contributions through deception, seed money contributions, and false statements on campaign forms. Mr. Wayne said the Commission did not have oversight regarding reimbursements by the Legislature.

Ms. Neumann commented that she could see nothing untoward that required an investigation. She said the request for an investigation conflated two definitions of residency, and Sen. Jackson's occupation of the Augusta property amounted to a temporary relocation that did not change the fact that Allagash was his residence.

Mr. Hastings said that serving as a presiding officer of the State Senate or House of Representatives was close to a full-time job. He found it credible that Sen. Jackson would have been in Augusta for a majority of 2019-2020 and that was not inconsistent with being a legal resident of Allagash. He said the fact that Sen. Jackson paid capital gains tax on the sale of the Augusta property was a strong indication that the Senator did not see the Augusta property as his primary residence.

Ms. LeClaire acknowledged the effort that it takes residents of Aroostook County to travel to Augusta regularly. She stated it was clear that Sen. Jackson spends an enormous amount in Augusta and needs a place to stay. She said she did not question his dedication to Allagash and his residency there. She said that Sen. Jackson's compliance with the rules for obtaining an FHA-insured loan was not an issue for the Commission, but she noted that the rules are designed to screen out borrowers who are purchasing investment homes and Sen. Jackson did not use the Augusta property for that purpose.

Mr. Marble stated that the issue of any misstatement in the loan application was not in the purview of the Commission and there were other parties that were better suited to examine that issue. He said he was a little chagrined that Rep. Andrews' request had come before the Commission.

Mr. Schneider said he appreciated the testimony from both Rep. Andrews and Sen. Jackson and he believed everything they had said at the meeting. After evaluating the evidence received by the Commission, he concluded that Sen. Jackson was a resident of Allagash for purposes of Maine's legislative ethics and campaign finance laws.

Ms. Neumann moved to take no further action on Rep. Andrews' request for investigation. Mr. Marble seconded the motion. The motion passed (5-0).

3. Complaint about Flyer in House District 52

Jennifer Small, a resident of House District 52, had submitted a request to investigate a flyer she received by mail in October 2022. The flyer contained statements that were critical of the Democratic nominee in that House district. The flyer's disclaimer said it was paid for by Concerned Parents of MSAD 75, which was not an identifiable group. The disclaimer did not indicate an address for the flyer's sponsor and whether it was authorized by any candidate. Mr. Wayne said the staff saw merit in investigating the possible violation of the disclaimer statute and independent expenditure reporting requirements.

Ms. LeClaire stated an investigation may help educate the public when this sort of material is distributed so the public knows where it is coming from, and she felt it was a proper use of the Commission's resources to investigate.

Ms. Neumann moved to have the Commission investigate this matter. Mr. Marble seconded the motion. The motion passed 5-0.

4. Proposed Rulemaking

The Commission discussed revisions to rule amendments that department staff had proposed at the August 23, 2023 meeting. Mr. Schneider moved to proceed with the rulemaking as presented. Mr. Marble seconded the motion. The motion passed 5-0.

Investigation of Alpine Initiatives LLC and Stop the Corridor (Clean Energy for ME, LLC)

Mr. Schneider explained this agenda item consisted of two enforcement matters that the Commission had previously directed staff to investigate. He noted the Commission had received a letter from Mr. Newell Augur, Esq. requesting it consider these matters in public session.

Mr. Bolton said that a court decision, *Narowetz v. Board of Dental Practice*, 2021 ME 46, required the Commission to have two legal counsel when the Commission potentially might hold an

evidentiary proceeding. Mr. Mark Terison, Esq. would participate to represent the Commission and advise it on legal matters. Mr. Bolton would represent the Commission staff.

Ms. Neumann disclosed that, in her capacity as a private attorney, she represents an individual named John Flumerfelt whose name appears in the Stop the Corridor matter tangentially. She said her representation of him was entirely unrelated, and she did not intend to recuse herself from the Stop the Corridor enforcement matter.

Mr. Schneider acknowledged the general duty of the Commission to conduct its business in public proceedings. He said that, in these two matters, the Commission needed to consider investigative working papers that are designated as confidential by 21-A M.R.S. § 1003(3-A) and therefore are not public records under 1 M.R.S. § 402(3)(A).

Mr. Schneider moved to go into executive session pursuant to 1 M.R.S. § 405(6)(E) and (F) and 1 M.R.S. § 1005 for the purpose of discussion and permitted deliberation upon investigative working papers of the Commission made confidential by 21-A M.R.S. § 1003(3-A). Mr. Hastings seconded the motion. The motion passed 5-0 at approximately 10:50 a.m.

The Commission met in executive session until 1:16 p.m., when it reconvened in public session. Mr. Schneider confirmed the Commission had considered the investigatory matters in executive session and that the Commissioners, Commission staff, Assistant Attorney General Bolton, and outside counsel Mark Terison, Esq. had been present.

Adjournment

Ms. Neumann made a motion to adjourn. Mr. Marble seconded. The motion passed 5-0. The meeting adjourned at 1:18 p.m.

Respectfully submitted,

Jonathan Wayne, Executive Director