



Minutes of the January 31, 2024 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.

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 November 29, 2023 Meeting

Mr. Hastings moved to amend the November 29, 2023 minutes. Mr. Marble seconded the motion. The motion passed 5-0.

Mr. Schneider moved to ratify the November 29, 2023 minutes as amended. Mr. Marble seconded the motion. The motion passed 5-0.

2. Complaint by William Clardy against Sen. Troy Jackson

Mr. William Clardy filed a complaint against Sen. Troy Jackson and the Preti Flaherty law firm. In 2020, Sen. Jackson and his partner brought a lawsuit against the sellers of a property they purchased, alleging it had undisclosed defects. They hired Preti Flaherty to represent them by entering into a contingent fee agreement. Because of this financial arrangement, Mr. Clardy requested the Commission investigate whether Sen. Jackson should have reported the legal services as a gift from Preti Flaherty in his 2020-2022 statements of sources of income. Mr. Clardy also asked the Commission to investigate whether Preti Flaherty should have filed a lobbyist expenditure report with the Commission because the law firm had made expenditures to benefit Sen. Jackson.

In his presentation to the Commission, Mr. Clardy explained he is a proponent of transparency. He said contingent fee agreements are a blind spot in Maine's legislative ethics law. He suggested the Commission should come up with policies or guidelines when officials receive legal services under a contingent fee agreement. He did not think Sen. Jackson intended any wrongdoing, but if a law firm provides legal services to a legislator intending to gain political favors, ethical guidelines or reporting procedures should curb that.

Mr. Clardy acknowledged that contingent fee agreements are commonly used in personal injury cases that are perceived as winnable. He stated Sen. Jackson's lawsuit has been going on for three to four years, which is a long period for a contingent fee case. He said he looked at a contingent fee agreement as a line of credit to the client, which may or may not get paid.

Sen. Jackson made comments in response. He said it would be a troubling precedent if the Commission decided ethical rules prevented him from hiring Preti Flaherty using a contingent fee agreement. This would make it harder for legislators to retain legal counsel.

Mr. Schneider said Mr. Clardy had raised an interesting question concerning whether contingent fee agreements should be disclosed. He asked Mr. Clardy if legislators should be precluded from entering into contingent fee agreements with law firms. Mr. Clardy said he was not sure but felt there should be a reporting requirement for transparency. He said it would be a good idea to discourage them.

Mr. Hastings asked Mr. Clardy if he would approve of legislators entering into a contingent fee agreement with a law firm that was not involved in government relations or lobbying. Mr. Clardy indicated he would not see a problem with it, but the legislator should ask the Commission staff to review whether it would be a reportable event.

Ms. Neumann asked if Mr. Clardy felt the same for any legislator who engages an attorney and receives a discount on their bill. Mr. Clardy replied technically yes but it would be a judgement call. He suggested the Commission should adopt a policy on this.

Mr. Marble asked about a hypothetical situation in which a family member of a legislator was injured in a car accident and the legislator could only afford to hire an attorney through a contingent fee agreement. He asked whether that situation should raise an ethical flag for the Commission or require examination by Commission staff. Mr. Clardy said if the case lasted long enough for the arrangement to be a gift, it should be reported.

Sen. Jackson commented that he never considered the contingent fee agreement to be a gift. He received a small settlement of \$12,000 from one defendant, a third of which went to Preti Flaherty. He said the lawsuit had taken longer because of covid.

Mr. Hastings expressed a concern that Sen. Jackson chose such a prominent lobbying firm that spends a lot of time at the State House influencing legislation. Sen. Jackson said he has hired attorneys through contingent fee agreements three times and each time he had gone with an attorney he knew. He and Preti Flaherty are not always on the same side of legislative issues, and he is able

to separate his personal and professional relationship with the firm. He said he cannot help how that relationship is perceived by others.

Mr. Schneider said he would not want to make a decision that would limit legislators and public servants from using contingent fee agreements.

Mr. Gerald F. Petruccelli, Esq., representing Preti Flaherty, said the firm had entered into the agreement with Sen. Jackson believing it to be a potential six-figure lawsuit for fraud. A contingent fee agreement made sense in this case. He said that the Commission is correct there are plenty of other lawyers around, but people tend to go with who they know. He said much of the previous discussion struck him as a brainstorming session about whether there should be a change in the legislative ethics law. He said, under current law, Preti Flaherty has not been obligated to report anything.

Ms. Neumann moved to take no further action. Mr. Marble seconded the motion. The motion passed 5-0.

Executive Session

Mr. Schneider moved to go into executive session pursuant to 1 M.R.S. § 1013(3-A) to discuss whether to pursue a legislative ethics complaint. Mr. Marble seconded the motion. The motion passed 5-0.

At 10:07 a.m., the Commission entered executive session to discuss part of Mr. Clardy's complaint that alleged a violation of legislative ethics. The Commission reconvened in public session at 10:18 a.m.

Ms. Neumann moved to take no further action on the matter. Mr. Marble seconded the motion. The motion passed 5-0.

3. Late Major Contributor Report – Genuine Parts Company

On September 1, 2023, Genuine Parts Company donated \$500,000 to support the Maine Automotive Right to Repair Ballot Question Committee (BQC). After Genuine Parts Company received a notice from the BQC, it should have filed a major contributor report with the Commission on October 5th, but it was filed one day late on October 6th. The preliminary penalty was \$50,000. The BQC seeks a waiver of the penalty. Staff recommended a partial waiver to \$5,000.

Ms. Kathleen Eidbo, Vice President and Senior Counsel for Genuine Parts Company, acknowledged the company was one day late in filing due to extenuating circumstances. The legal department was unaware of the donation and the need to file a report. The company employee who facilitated the donation retired a few days after it was made. His email account was not being monitored after his departure to receive the notice from the BQC. She stated Genuine Parts Company did file the report on time, but it was not signed. The signed copy was filed one day late.

Mr. Schneider moved to reduce the penalty to \$5,000. Ms. Neumann seconded the motion. The motion passed 5-0.

4. Late Notices by Our Power to Two Major Contributors – (Rescheduled)

5. Adoption of Rule Amendments

The Commission initiated a rulemaking on October 25, 2023 to implement statutory changes and to adjust the Commission’s meeting procedures. The only comment received by the Commission was support for a proposed change in the Commission’s procedures for making independent expenditure determinations.

Mr. Schneider moved to adopt the proposed amendments to the Commission’s rules. Ms. Neumann seconded the motion. The motion passed 5-0.

6. Proposed Rulemaking on Spending by Foreign Government-Influenced Entities

On November 7, 2023, Maine voters approved a citizen initiative to prevent foreign governments from influencing elections in Maine. Staff drafted proposed rule amendments to implement the law in consultation with Commission Counsel. The Commission members said they were comfortable with the draft rules, except they directed staff to delete one provision that would impose a limit of \$100 for some penalties.

Mr. Schneider moved to proceed with a rulemaking for the amendments as presented, except for the penalty provision. Ms. Neumann seconded the motion. The motion passed 5-0.

Other Business

On January 5, 2024, State Representative Michael Soboleski filed a complaint with the Commission concerning a ruling by Secretary of State Shenna Bellows that the nomination petition of Donald J. Trump was invalid. Mr. Wayne said that, after conferring with the Office of the

Attorney General, Commission staff determined the complaint was outside the Commission's jurisdiction and returned the complaint to Rep. Soboleski as provided in the Commission's rules. Mr. Bolton clarified that Commission staff had conferred with another Assistant Attorney General, because Mr. Bolton advises the Secretary of State generally.

Adjournment

Ms. Neumann made a motion to adjourn. Mr. Hastings seconded. The motion passed 5-0. The meeting adjourned at 10:58 a.m.

Respectfully submitted,

Jonathan Wayne, Executive Director