



Minutes of the September 29, 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.; Sarah LeClaire, Esq.; Dennis R. Marble; and William J. Schneider, Esq.

Staff: Jonathan Wayne, Executive Director; Jonathan R. Bolton, Assistant Attorney General; and Michael Dunn, Political Committee and Lobbyist Registrar

Commissioner Lee convened the meeting at 9:35 a.m. The meeting was livestreamed via YouTube.

The Commission considered the following items:

1. Ratification of the Minutes of the August 23, 2021 Meeting

Mr. Lee moved to adopt the minutes of the August 23, 2021 meeting. Mr. Schneider seconded the motion. Motion passed 5-0.

2. Complaint against Candidates and the American Legislative Exchange Council

Mr. Hastings disclosed that he had been a member of the American Legislative Exchange Council (ALEC) approximately 12 years ago. No objections were received in connection with his participation in considering the complaint.

Mr. Wayne described the complaint filed by the Center for Media and Democracy (CMD) against Senator Harold Stewart, Representative Matthew Harrington, and ALEC. The complaint alleged ALEC had made in-kind contributions to its members in Maine by providing ALEC CARE (Constituent Analytics and Research Exchange) software as part of their membership subscription.

Joshua Tardy, Esq. appeared on behalf of Sen. Stewart and Rep. Harrington. Mr. Tardy said neither legislator used the ALEC CARE software. He said Sen. Stewart tested the software but did not find it useful. He said any member of the Legislature could join ALEC and gain access to this software but that did not mean they would use it. All legislative candidates in Maine have access to the voter data through their party and that is more useful to them for campaign and constituent purposes.

Sen. Stewart appeared via Zoom and said he learned about the software at an ALEC conference in 2017, tested it and decided not to use it. He said the last time he signed into the software was in 2017 and did not know how he could access that software now.

Rep. Harrington appeared via Zoom and said he received a demo for the software but never followed up to get a password to use it. He indicated he prefers to use paper voter lists and make notes.

Arn Pearson, Esq., executive director for CMD, appeared before the Commission. Mr. Pearson said the software is a benefit designed to help members of ALEC get elected. He said ALEC CARE is based on the Voter Gravity software, which was developed to help with micro-targeting voters. He acknowledged the complaint is mainly against ALEC for making a valuable in-kind contribution to legislative candidates in Maine. He said one of the requests in the complaint is to obtain a list of ALEC members in Maine and their log-in data for ALEC CARE. He said ALEC keeps its membership lists secret, so other candidates for the Maine Legislature may have used the ALEC CARE software in 2020.

Jason Torchinsky, Esq. and John Cycon, Esq. of Holtzman Vogel appeared via Zoom on behalf of ALEC. Mr. Torchinsky said ALEC is a bipartisan 501(c)(3) tax-exempt organization. He said there is no evidence that the software was ever used for campaign purposes by the two Maine legislators, so the complaint should be dismissed. He said he did not know if ALEC would voluntarily give the Commission access to ALEC CARE; and indicated ALEC would not be cooperative with a request for its membership list for the purposes of identifying Maine members who may or may not have used ALEC CARE. He said ALEC has made clear in its trainings and documentation that ALEC CARE is to be used by legislators in their official capacity for constituent management purposes and there is no evidence that it has been used for anything else. He said Voter Gravity is the company that created ALEC CARE. He said ALEC has never commercially valued ALEC CARE; it is a benefit of membership. He said there is a value to the software for constituent management purposes, but he could not quantify that value.

The Commissioners discussed several facets of this complaint, including whether the candidates' access to the software constituted a contribution if they did not use the software and whether sufficient grounds existed to request ALEC's membership list. Some Commissioners expressed that examining the purpose and value of the software would be necessary to deciding if there was an over-the-limit or in-kind contribution.

Mr. Lee moved to find there were insufficient grounds to conduct any investigation of Sen. Stewart and Rep. Harrington for the violations alleged by CMD. Mr. Schneider seconded the motion. Motion passed 5-0.

Mr. Lee moved that there were sufficient grounds to investigate whether ALEC violated 21-A M.R.S. § 1015(2) by making a contribution to a candidate in excess of \$400 for the purpose of influencing an election. Ms. LeClaire seconded the motion. No vote was taken.

Mr. Lee revised his motion to find there were sufficient grounds to investigate whether ALEC violated 21-A M.R.S. § 1015(2) by making a contribution to legislative candidates in excess of \$400 for the purpose of influencing an election and at the present time, for purposes of this investigation only, to review the ALEC CARE software and its value and the Voter Gravity software referenced in the meeting's discussion. Mr. Marble seconded the motion. Motion passed 3-2, with Mr. Hastings and Mr. Schneider opposed.

3. Request for Waiver of Late-Filing Penalty – Lobbyist Anya Fetcher

The Commission considered a request for a waiver of a late-filing penalty by lobbyist Anya Fetcher for filing her May lobbyist report six minutes. Ms. Fetcher was not present at the meeting.

Mr. Lee moved to impose the \$50 penalty for the late-filed lobbyist report. Mr. Schneider seconded the motion. Motion passed 5-0.

4. Request for Investigation – Missing Address in Advertisements by Mainers for Fair Laws

Mr. Wayne said Mainers for Local Power requested an investigation into two advertisements sponsored by Mainers for Fair Laws, a ballot question committee (BQC) opposing the New England Clean Energy Connect initiative, that did not list the BQC's address in the "paid for" disclosure statement in the ads. He said he believed that Mainers for Fair Laws had acknowledged that the ads were in violation.

Mr. Lee raised the issue of a potential conflict of interest for Mr. Dunn and asked if anyone had a problem with him participating in this matter. No concern was expressed.

Newell Augur, Esq., appeared on behalf of Mainers for Fair Laws. Mr. Augur said the BQC takes full responsibility for the mistake and would accept whatever penalty the Commission imposed. He said he did not believe the ads had been proofed before airing. He said the committee's information, including its address, is on file with the Commission and there was never an intent to deceive the public about who was funding this campaign. He acknowledged that Clean Energy Matters and Avangrid are the primary funders for the BQC. He believed the Commission had a precedent for dealing with multiple violations that either occur at the same time or stem from the

same error. In this matter, the ads are nearly identical, were created at the same time and the same vendor was used for all the advertising.

Adam Cote, Esq. appeared on behalf of Mainers for Local Power and discussed the factors in campaign finance law that would be relevant to the amount of any penalty. He said this was one of the largest and most expensive ad campaigns in Maine history. Regarding the potential for concealment, he said Mainers for Fair Laws is a subsidiary of Clean Energy Matters and has the same funder. He contended these ads would be perceived differently if they had been run by Clean Energy Matters, which is well-known in connection with the corridor referendum. He disagreed with the view of Commission staff that the violations for the different advertisements should be considered as a single violation. The penalty should be consistent with the high value of the advertising and its wide dissemination.

The Commissioners discussed the campaign experience of Mainers for Fair Laws, the amount spent on the advertising, and the wide distribution of the ads, which argued for a higher penalty. They did not support treating this matter as separate violations.

Mr. Lee moved to consent to Michael Dunn's participation in this matter despite a potential conflict of interest. Mr. Marble seconded the motion. Motion passed 5-0.

Mr. Lee moved that Mainers for Fair Laws be fined \$2,500 for failure to state its address in the advertisements, which is a violation of 21-A M.R.S. § 1055-A. Mr. Hastings seconded the motion. Motion passed 5-0.

5. Investigation Report and Recommended Penalty – Working Families PAC

Mr. Wayne said the Commission staff had reviewed the bank statements for the Working Families PAC, the leadership PAC of former State Representative Diane Russell, and had found a large amount of unreported contributions and expenditures, including some that were made for food or other personal purposes. Because of the language in the statutory reporting requirements, however, the staff was not recommending a penalty for the incomplete reporting. The Commission staff recommended a \$285 penalty against the PAC and Ms. Russell for making an over-the-limit contribution from her PAC to her 2016 primary election campaign for the Democratic nomination for State Senate. He said if the Commission assesses the penalty and Ms. Russell does not voluntarily pay it within 30 days, the Commission staff would refer the unpaid penalty to the Attorney General's office for collection, along with penalties previously imposed.

The Commissioners discussed that there appeared to be some potentially criminal conduct, but it may not be actionable due to the statute of limitations. They agreed that if the statute had not expired, a referral should be made to the Attorney General's office.

Mr. Lee moved that the Working Families PAC violated 21-A M.R.S. § 1015(2) by making a contribution to the 2016 State Senate campaign of Diane Russell that exceeded the \$375 limit by \$285 and the Commission should assess a penalty of \$285. Mr. Schneider seconded the motion. Motion passed 5-0.

6. Enhanced Compliance Reviews of Leadership PACs

The Commissioners reviewed the options presented by the Commission staff for continuing the program of conducting enhanced compliance reviews of political action committees (PACs). The consensus was that, after the November 2022 general election, the staff should conduct an enhanced review of two caucus PACs and a limited number of leadership PACs, consistent with the workload and time constraints on the Commission staff at that time. They noted that it might be appropriate to select a limited time period during 2022 for the reviews, rather than the entire year. The Commission staff will put caucus and leadership PACs on notice of the review process in early 2022 and will confirm plans with the Commission in the fall of 2022.

7. 2021 Law Changes

The Commission staff presented the chapter laws enacted by the Legislature in 2021. This was an informational item only, and the Commission took no action.

Other Business: The Commission discussed a concept for a proposed rulemaking in response to a recent statute change that prohibits leadership PACs from using committee funds for personal expenses benefitting Legislators. The Commission was supportive of the concept.

Adjournment

Mr. Schneider made a motion, seconded by Mr. Lee, to adjourn. The motion passed. The meeting adjourned at 1:20 p.m.

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