



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

DRAFT

Minutes of the February 28, 2022 Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: David R. Hastings, Esq., and Dennis R. Marble.

Via Zoom: William A. Lee III, Esq., Chair; Sarah LeClaire, Esq.; and William J. Schneider, Esq.

Staff: Jonathan Wayne, Executive Director; and Jonathan R. Bolton, AAG

Commissioner Lee convened the meeting at 10:15 a.m. The meeting was livestreamed via YouTube.

The Commission considered the following items:

1. Ratification of the January 26, 2022 Minutes.

Mr. Marble moved to adopt the minutes as presented. Mr. Lee seconded the motion. Motion passed 5-0.

2. Complaint – The Dinner Table PAC

Mr. Wayne explained that Michael Hein had filed a complaint against The Dinner Table PAC alleging the PAC did not correctly disclose the employment information for five of its contributors who are current legislators. He believes their legislative service should have been listed as their employment. Mr. Wayne said the Commission Rules require candidates and committees to make a reasonable effort to obtain the contributors' employment information.

Michael Hein appeared before the Commission and said there were 14 legislators who contributed to this PAC. Nine of them identified their occupation as a legislator and five did not. His concern was this was not consistent, transparent, or in the spirit of the law. He suggested the Commission should revise its interpretation of the statute to ensure accurate reporting in the future.

Rep. Laurel Libby appeared before the Commission for The Dinner Table PAC and said the PAC is following the law. She believes it is more transparent to list a contributor's full-time job rather than part-time legislative work. She indicated that if there were two boxes for employment information, she would list both her full-time job and her part-time legislative job.

The Commissioners discussed whether adding a second box for employment would be an easy fix but concluded there was no need to revise the current staff advice.

Mr. Lee moved to dismiss the complaint because the evidence presented demonstrated the PAC had complied with the statute and Commission Rule on this matter. Mr. Marble seconded the motion. Motion passed 5-0.

3. Request for Penalty Waiver - No on 3: Right to Food is Wrong for Maine

Mr. Wayne said No on 3: Right to Food is Wrong for Maine registered as a PAC in October 2021 to oppose a constitutional amendment on the November 2021 ballot. On October 25, 2021 the PAC made a \$17,500 expenditure, on October 26 received a \$6,600 contribution and made a \$10,000 expenditure. Three 24-Hour reports were due on October 26 and 27 but were not filed until October 28. The preliminary penalty is \$932. Mr. Wayne said there is a black message box that pops up when a transaction is entered that triggers the filing of a 24-Hour Report and there is also a red warning message on the committee's home page about the 24-Hour reporting period.

Gina Garey, Treasurer for No on 3: Right to Food is Wrong for Maine, said that she volunteered to be the treasurer, had no experience with campaign finance and took full responsibility for the mistake. She said she worked with the Commission staff to fix all errors and the reports were filed before election.

The Commissioners discussed that the pop-up message to prompt the filing of a 24-Hour Report should be revised to give a more precise warning. Mr. Lee moved to reduce the statutorily calculated penalty of \$932 to \$500. Mr. Hastings seconded the motion.

Mr. Marble moved to amend the motion to reduce the penalty to \$300. Ms. LeClaire seconded the motion. Motion passed 4-1 (Mr. Lee opposed).

The amended motion to reduce the statutorily calculated penalty of \$932 to \$300 passed 5-0.

4. Staff Update on ALEC CARE Investigation

Mr. Wayne said the Commission staff contacted other states that had received the Center for Media and Democracy's complaint. He said only Maine and Connecticut had initiated investigations into the complaint, six other states dismissed the complaint, and two states did not respond to the complaint. He said none of these agencies had any more information about ALEC CARE than the Commission. He said the three possible options presented at the January 26 meeting are still relevant: 1) issue subpoena(s) to gather information; 2) direct the Commission staff to analyze the available information and report back on possible findings of violation; or 3) take no further action.

Mr. Lee said he would not vote to suspend the investigation due to a lack of cooperation. Mr. Schneider said he would dismiss the investigation due to not having met the standard for an investigation. Mr. Marble said he did not appreciate being told they could not have the requested information and then being told they did not have a case by ALEC's attorney.

Mr. Lee moved that the Commission issue subpoena(s) for the ALEC CARE software. Ms. LeClaire seconded the motion.

Mr. Bolton suggested the Commissioners consider giving a slightly broader authority to allow the staff to request screenshots, background documentation on the software, user manuals, etc.

Mr. Lee amended the motion to have the Commission staff issue subpoenas for production of the ALEC CARE software and any documentation related to it.

Mr. Wayne suggested that the exact limits of the information to be requested in subpoenas did not have to be worked out at the meeting and should be broad enough for the staff to have discretion to request all relevant information.

Mr. Lee withdrew his prior motions.

Mr. Lee moved that the Commission staff is authorized to issue subpoenas to determine whether the provision of ALEC CARE software to candidates violated 21-A M.R.S. § 1015(2). Ms. LeClaire seconded the motion. Motion passed 3-2 (Mr. Hastings and Mr. Schneider opposed).

5. Request for Penalty Waiver – Mainers for Local Power PAC

Mr. Wayne said the Mainers for Local Power PAC contacted the Commission staff in December 2021 to report that it had failed to file two 24-Hour reports in October. On October 25, the PAC received a \$300,000 contribution and on October 27, made a \$98,500 expenditure, triggering two 24-Hour reports due on October 26 and 28. The preliminary penalty is \$398,500. The PAC is seeking a waiver because it self-reported the error, had filed ten other 24-Hour reports on time and these transactions represent a tiny percentage of the overall financial activity for the PAC.

James Kilbreth, Esq., appeared before the Commission on behalf of the PAC and said they had been involved in a lot of activity at the time these two reports were due, and this was an inadvertent mistake. He said there was no public harm because the amount of these transactions was miniscule compared to the overall financial activity reported by the PAC.

The Commissioners discussed: the amount of money in this matter was greater than any prior similar matters; the amounts in violation were not miniscule, especially when compared to the No

on 3 matter discussed earlier; inexperience was not a consideration in reducing the penalty; and a higher penalty would serve as a deterrent in the future.

Mr. Lee asked about the statutory history for penalty calculations. Mr. Wayne explained there has always been a maximum penalty amount, but that the maximum penalty has changed over time from \$10,000 to what is currently in statute based in part on a Commission proposal and a 2015 citizen initiative. The current statute states that the penalty for late reports exceeding \$50,000 in activity are 100% of the activity reported late.

Mr. Hastings moved to find two violations for late 24-Hour reports and impose a \$10,000 penalty for the \$98,500 expenditure and a \$25,000 penalty for the \$300,000 contribution, for a total penalty of \$35,000. Mr. Schneider seconded the motion. Motion passed 5-0.

Adjournment

Mr. Lee made a motion, seconded by Mr. Hastings, to adjourn. The motion passed. The meeting adjourned at 12:30.

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