



Minutes of the May 31, 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.; Sarah LeClaire, Esq. and Stacey Neumann, Esq.

Staff: Jonathan Wayne, Executive Director

Commissioner Schneider convened the meeting at 9:03 a.m.

1. Ratification of the Minutes of the February 28, 2023 Meeting

Mr. Schneider moved to ratify the February 28, 2023 minutes. Mr. Marble seconded the motion. The motion passed 5-0.

2. Complaint against the American Leadership Committee – Maine PAC

Mr. Wayne provided a summary of a complaint filed by Mr. William Clardy against the American Leadership Committee - Maine PAC (ALC) raising three compliance issues in connection with its 2022 activity to promote Democratic legislative candidates. He asserted ALC should have reported the legal services of Elias Law Group as a debt or in-kind contribution, and also should have reported as an in-kind contribution paid staff time by the Democratic Legislative Campaign Committee (DLCC) in preparing independent expenditure (IE) communications to promote Maine candidates. Mr. Clardy also questioned the expenditure dates in IE reports filed by ALC, alleging that ALC made commitments to pay for communications earlier than stated in the reports.

With respect to the expenditure dates, Mr. Clardy said that ALC committed to paying for the costs of producing digital advertisements prior to the October 3, 2022 expenditure date in ALC's first IE report. When he was reviewing ALC's post-election reports, he saw that ALC had not reported any legal costs or the DLCC's use of staff time to benefit ALC.

Mr. Jonathan Berkon, Esq., counsel for ALC, acknowledged that his client inadvertently omitted legal fees as debts in its 42-Day Post-General Election campaign finance report. Before the May 31, 2023 Commission meeting, ALC consulted with Commission staff and amended the report to

include the legal services as debts. When the DLCC paid the debts, ALC reported the legal services as in-kind contributions.

Regarding the other issues, Mr. Berkon said Mr. Clardy was bringing forward policy rather than legal arguments. The only reasonable expectation the Commission could have of the regulated community is that they follow the rules as commonly understood at the time the activity took place. Mr. Berkon referred to advice by the Commission staff on IE reporting as described in the staff's memo for this agenda item: "our consistent advice has been an IE report is triggered only when the committee has directed the vendor to print a mailing supporting or opposing specific candidates." Mr. Berkon said ALC applied that standard when preparing digital ads. Tracking the time of DLCC employees to promote Maine candidates so that they would be disclosed as in-kind contributions was not the rule in 2022 and would be an enormous administrative burden.

Mr. Wayne said campaign finance laws are intended to provide information to the public on who is spending money on communications, the sources of that money, and some transactional information about how the group is paying vendors. When political action committees are spending money on IE communications, the Commission staff expects payments to vendors to be reported, but do not expect national or local groups to have the type of internal accounting that Mr. Clardy is requesting. Since this is a standard the Commission staff has not applied in the past, it would be unfair to fault ALC for not including this detailed allocation of staff time in their reports.

Mr. Schneider moved to find ALC-Maine liable for reporting \$55,654 of legal fees late on their 42-Day Post-General Report. Mr. Marble seconded the motion. The motion passed 5-0.

Mr. Berkon requested a penalty waiver.

Mr. Schneider moved to assess a fine of \$2,500. Mr. Marble seconded the motion. The motion passed 5-0.

Mr. Schneider moved to take no further action on the matter of the accuracy of the dates in ALC's independent expenditure reports. Mr. Hastings seconded the motion. The motion passed 5-0.

Mr. Schneider moved to take no further action on the matter of reporting staff time. Mr. Marble seconded the motion. The motion passed 5-0.

3. Complaint against the Democratic Legislative Campaign Committee

Mr. Wayne said the DLCC made large contributions to four PACs in Maine to support Democratic candidates in 2022. To the best of the staff's knowledge, the PACs reported the contributions correctly. The DLCC did not register and file reports as a PAC because it believed itself to be an exempt donor. In his complaint, Mr. Clardy argued the DLCC did not meet the statutory criteria for the exemption because the DLCC had raised funds to influence Maine elections from two websites, www.dlcc.org and www.republicaninsurrectionists.co. Mr. Clardy also contended that the DLCC was not exempt because it made expenditures to its employees to create webpages spotlighting Maine candidates.

In response to the complaint, Mr. Berkon said that money contributed through the "donate" buttons on www.dlcc.org did not go to the DLCC, but rather to local candidates and committees in Maine. Funds raised on the republicaninsurrectionists.co website went to the DLCC but were not received to influence Maine elections. He argued that the DLCC had spent nominal staff time preparing pages containing limited profiles of several Maine candidates and noted Commission staff agreed with the DLCC's argument that it would be administratively burdensome to require the DLCC to track this staff time.

Mr. Clardy asked whether the DLCC was claiming the general donor exception or the donor exception for political committees registered in jurisdiction outside of Maine. He said the DLCC should be considered a PAC because it received contributions and made expenditures to influence the 2022 elections and a special election in 2021. He presented the Commission with screenshots of DLCC websites advocating for and against Maine candidates and argued the DLCC staff time used in creating these websites should be considered expenditures.

Mr. Berkon indicated the DLCC was claiming the general donor exception that potentially applies to any contributor and reiterated the terms of the exception. The DLCC donated substantial money during this election cycle which was reported by registered committees in Maine that received the contributions. He said all donations made by the public through the www.dlcc.org website were

reported by the candidates or committees that received the contributions. Mr. Berkon asserted funds raised by the Republicaninsurrectionists.co website were not for influencing a Maine election but rather to support the DLCC's national program.

Mr. Schneider moved that the Commission had not received enough information to demonstrate the DLCC must register as a PAC. Ms. LeClaire seconded the motion. The motion passed 5-0.

4. Resolution of Staff Review of 2022 Mark Lawrence Campaign

Mr. Wayne summarized the Commission staff's review of Sen. Mark Lawrence's 2022 campaign. Sen. Lawrence self-reported minor errors made by his campaign including \$150 in seed money omitted from campaign finance reports and a travel reimbursement to the campaign manager that has since been returned. Sen. Lawrence also shared with the Commission that someone had made three unauthorized electronic debits from his campaign account. During the staff review, a bank manager advised that the debits were due to an error by another depositor whose account number was the same as Sen. Lawrence's except for the final digit. The bank has since returned to the Commission the amounts debited from the campaign account erroneously.

Mr. Schneider moved to take no further action on this investigation. Ms. Neumann seconded the motion. The motion passed 5-0.

5. Supplemental Payments of Maine Clean Election Act (MCEA) Funds

Candidate Registrar Erin Gordon discussed supplemental payments made to MCEA candidates in recent election cycles.

Adjournment

Mr. Marble made a motion to adjourn. Ms. Neumann seconded. The motion passed 5-0. The meeting adjourned at 10:55 a.m.

Respectfully submitted,

Jonathan Wayne, Executive Director