



Minutes of the July 13, 2020, Special Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: William A. Lee III, Esq., Chair; Meri N. Lowry; and Hon. Richard A. Nass

Staff: Jonathan Wayne, Executive Director

Commissioner Lee convened the meeting at 10:04 a.m.

The Commission considered the following items:

1. Complaint – Late Campaign Finance Report by Senate Candidate Stan Gerzofsky

Mr. Wayne said Stan Gerzofsky was a candidate for the Maine Senate in District 24 and was in an opposed primary election. Mr. Gerzofsky was required to file the 11-Day Pre-Primary Report on July 6th but did not file the report until Wednesday, July 8th. The originally filed report only showed one expenditure to The Cryer, a local newspaper based in Brunswick, for approximately \$2,300. On July 9th, the Commission staff received an email alleging that Mr. Gerzofsky had done more advertising in The Cryer than what was reported in his 11-Day Pre-Primary Report. On July 10th, a written complaint from four concerned citizens in Brunswick was filed with the Commission, alleging that Mr. Gerzofsky grossly under-reported his expenditures. Mr. Wayne said Mr. Gerzofsky spoke with Emma Burke, the assigned Candidate Registrar, and clarified that more expenditures had been made to The Cryer than were reported, but one payment had not cleared his bank account. In addition, he had made three payments to The Cryer from his personal bank account for advertising, which he intended to have the campaign reimburse him. Ms. Burke amended the report on July 10th based on the information provided by Mr. Gerzofsky. The amended report included four additional expenditures and one duplicate expenditure was deleted. The amended report also included three loans from the candidate. Mr. Wayne concluded the initial report was filed two days late and significantly under-reported Mr. Gerzofsky's campaign expenditures and was therefore subject to late-filing penalties because every report must be substantially correct on the filing deadline.

Mr. Lee said it had been recommended by Commission staff and counsel that the Commission only address the violation aspect of this issue and defer any penalty considerations until a future meeting in order to give Mr. Gerzofsky the opportunity to request a waiver of the penalty. Mr. Wayne confirmed that under normal procedures, the Commission staff sent out a notice of late-filing penalty and provided the candidate or committee with the opportunity to request a waiver of the penalty. He said the complainants were not present today, but they would like this matter to be resolved at this meeting. He said they were requesting the penalty be tripled because the violation occurred in the two weeks before an election. In the view of the staff and the Commission's counsel, Mr. Wayne said the conservative way to handle this matter would be to provide Mr. Gerzofsky with the notice of late-filing penalty and opportunity to request a waiver.

Mr. Lee asked if Mr. Gerzofsky had been provided with an updated penalty amount. Mr. Wayne said Mr. Gerzofsky had not been informed about the updated penalty amount before the meeting. He said that in calculating a penalty for a substantially non-conforming report, the Commission staff typically based the penalty on the amount of the contributions or expenditures that had been omitted from the report. However, in a discussion between the Chair and Mr. Wayne, the Chair suggested that the way to calculate the penalty should be to view the report as having been filed four days late because the report should have been complete on July 6th but the complete report was not filed until July 10th, making the report four days late. The Commission staff recalculated the preliminary penalty to be \$390.50.

Mr. Lee asked if Ms. Lowry and Mr. Nass were agreeable to viewing this report as being four days late because it was not substantially complete until four days after the due date rather than a report that was filed two days late and had to be amended two days later to make it substantially complete. He said that, historically, they have treated multiple violations that occur at the same time as one violation. Ms. Lowry and Mr. Nass agreed. Mr. Nass asked about the request for tripling the penalty. Mr. Lee said they were bifurcating the matter by addressing the issue of whether or not there was a violation today, which will give Mr. Gerzofsky the opportunity to request a waiver. He said they could deal with the complainants request to triple the penalty if Mr. Gerzofsky did request a waiver.

Stan Gerzofsky appeared before the Commission. Mr. Gerzofsky agreed that the report was filed four days late. He said after an accident in the fall of 2019, he had multiple serious medical issues

that he was dealing with in 2020 and they were major contributing factors to the events that led up to the report not being filed on the deadline and not being complete when it was originally filed. Mr. Gerzofsky provided the Commissioners a summary of the medical issues he experienced since the fall. He said this was his tenth campaign for Legislature, but his first as a traditionally financed candidate. He said his treasurer requested copies of all the campaign checks, which he gave to her, but he forgot that he had made payments to The Cryer from his personal account. Mr. Lee asked when the second surgery was performed. Mr. Gerzofsky said it was in June. Mr. Lee said the advertisements were done in March and April. Mr. Lee said it will be important for Mr. Gerzofsky to lay out the events and their timeline if he filed a waiver request.

Mr. Lee asked if either Ms. Lowry or Mr. Nass had any questions. Ms. Lowry said she did not, but she wanted to make sure Mr. Gerzofsky understood that they were only considering whether or not there was a violation today. Mr. Nass said he wanted to make sure that Mr. Gerzofsky understood that the group that filed the complaint against him may be present at the next meeting and that they were seeking the penalty to be tripled. Mr. Gerzofsky said he understood. He did not deny the violation, but he wanted an opportunity to clear his name.

Mr. Lee made a motion to find that the campaign finance report filed by Mr. Gerzofsky was filed four days late, therefore it was a late filing, but to defer consideration of the penalty until he has had an opportunity to make a request for a partial or full waiver of the possible penalty. Ms. Lowry seconded the motion. Motion passed 3-0.

Adjournment

Mr. Lee made a motion, seconded by Mr. Nass, to adjourn. The motion passed. The meeting adjourned at 10:40 a.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director