



Minutes of the October 26, 2022 Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: William J. Schneider, Esq., Chair; Dennis R. Marble; and Stacey D. Neumann, Esq.

Participating via Zoom: David R. Hastings, Esq.; and Sarah E. LeClaire, Esq

Staff: Jonathan Wayne, Executive Director; and Jonathan R. Bolton, Assistant Attorney General

Commissioner Schneider convened the meeting at 9:00 a.m., which was livestreamed on YouTube to consider the following items:

1. Ratification of the Minutes of the September 28, 2022 Meeting

This agenda item was rescheduled for a future meeting.

2. Complaint – Lack of Disclosure Statement in Mailing Supporting Candidate Susan Bernard

Mr. Wayne described a complaint by Mr. Rommy Haines regarding a mailing sent by Rep. Susan Bernard's State Senate District 1 campaign signed by Fort Fairfield resident Mr. Kerby Doughty. Under law, express advocacy mailings must include a disclosure stating who financed it and if it was authorized by the candidate. The mailing did not include the required disclosure.

Mr. Joshua Tardy, Esq. appeared on behalf of the campaign and said this was a mistake and that ultimately the campaign is responsible for proofing the materials. Rep. Bernard agreed and accepted full responsibility for the error, which was a fraction of the 11,000-13,000 piece mailing for seven different endorsement letters.

Ms. LeClaire inquired if anything has been done to rectify the error of violating the disclosure requirement, such as notifying the recipients of the omission. Mr. Tardy added when this violation happens for signs, the violation is corrected by adding disclosure stickers to the signs, but unfortunately that is not possible for mailings.

Chairman Schneider moved that the campaign was in violation of 21-A M.R.S. § 1014 (1).

Commissioner Marble seconded the motion. The motion passed (5-0).

Chairman Schneider moved to assess the campaign a \$25 penalty. The motion was seconded by Ms. Neumann. Mr. Marble said he understood the reasoning behind the \$25, but thought it was too low,

and moved to amend the Chairman's motion to assess a \$75 fine. The motion was seconded by Ms. LeClaire. The motion to amend passed 3-2. Mr. Schneider moved to assess a fine of \$75 for the violation. The motion passed 3-2.

3. Complaint – American Leadership Committee-Maine PAC

Ms. Mary Small filed a complaint regarding a mailing from the American Leadership Committee-Maine (ALC) PAC that did not disclose any top funders in recent independent expenditure (IE) communications. The Commission received a second complaint from Ms. Kim Pettengill. Mr. Wayne explained that the PAC was established by the Democratic Legislative Campaign Committee (DLCC), a national organization dedicated to electing Democratic candidates to state office in more than 20 states. He summarized the complaint and ALC response. The ALC inserted a disclosure message of “No Top Donors” because it attributed the costs of the IEs to specific donors who gave less than \$1,000 to the DLCC. Mr. Wayne expressed concern about that approach because the intent of this law is for independent spenders to disclose the top three donors since the last general election.

Mr. Bolton explained a provision in the top three funders law, 21-A M.R.S. § 1014 (2-B). This allows an independent spender to exclude sources of funds that are spent in the order received, or funds that are strictly segregated in other accounts. If the funds meet those requirements, they can be disregarded under the statute. Mr. Bolton also described Chapter 1, § 7(12) of the Commission’s rules, which addresses a PAC that is fully controlled or funded by a different PAC or another legal entity.

Ms. Mary Small said she filed her complaint because ALC omitted the top donors as required by law, so the PAC would not have to list the actual donor, the DLCC. Ms. Kim Pettengill said ALC was required to list the top three funders of the DLCC since the 2020 general election.

Mr. Jonathan Berkon said ALC Maine disagreed with Ms. Small, because the Commission’s regulations preclude it. The DLCC publicly discloses its thousands of donors, the majority of whom are people who donate \$25-\$200. The main issue raised in this complaint is ALC’s method of attributing expenditures to specific donors. The DLCC uses a standard accounting method to avoid the appearance of double counting, which would be viewed as gaming the system. Mr. Marble

inquired what the concern is regarding double counting. Mr. Berkon responded that it looks like you are attributing the same donation to multiple expenditures.

Mr. Hastings stated ALC's accounting system resulted in segregating only small donors which allowed them to avoid the disclosure requirement. He believes the statute is clear that the three largest donors of the DLCC needed to be disclosed. Mr. Berkon replied this accounting method was not designed with respect to Maine but was designed to comply with laws in multiple jurisdictions.

Regarding the reporting dates, Mr. Berkon said the PAC reported October 12 as the expenditure date because it was the day the PAC was obligated to pay distribution costs for the ad. Mr. Berkon presented a hypothetical example in which a PAC designed a mailer to support a candidate, had it printed, but never distributed it. He proposed the cost of printing and design would not be an IE under Maine law. He noted DLCC occasionally incurs production costs, but later decides not to disseminate the communications.

Mr. Berkon stated he had never seen a regulatory agency require a committee to file IE reports solely based on production costs if there is no obligation for distribution costs. He is confident Maine committees don't follow that rule, it would be unworkable, and he was not sure it provides any more information to voters. He thinks the Commission should make clear that an IE is made for reporting purposes when there is an obligation to pay both for production and distribution costs. This interpretation would be clearer for the regulated community and the public would still be timely informed of all spending that influences elections because reporting will be tied closely to when the communication is disseminated. He added the actual printing for the ALC mailers in this case happened on October 10.

Mr. Hastings said the IE process may be simplified by triggering an IE only after the communication is produced and disseminated. He stated communication is the keyword and he is unsure of how we can determine that mailers sitting on the shelf without dissemination constituted a communication.

House District 60 candidate Mr. William Clardy, stated the DLCC chose to influence Maine elections and 19 other states, and "No Top Donors" is a clear misstatement.

Mr. Schneider moved that ALC Maine PAC violated 21-A M.R.S. § 1014 (2-B) and 94-270 C.M.R. Ch. 1, § 7(12)(D). The motion was seconded by Mr. Hastings. The motion passed 5-0.

Ms. Neumann for no penalty to be assessed. The motion failed for lack of a second.

Mr. Schneider moved the Commission defer assessing a penalty until the next meeting to allow staff to gather other information that should be considered. The motion was seconded by Ms. Neumann. The motion passed 5-0.

Mr. Schneider moved that the PAC violated 21-A M.R.S. § 1019-B(4) requiring it to file an IE report. The motion was seconded by Mr. Marble. The motion passed 5-0.

Mr. Schneider moved the Commission defer enforcement procedures until the next meeting and directed staff to obtain more information that should be taken into consideration. The motion was seconded by Mr. Marble. The motion passed 5-0.

4. Complaint – Contribution Reporting by Maine Families First PAC

Mr. Wayne described a complaint filed by Ms. Sara Salley against the Maine Families First PAC (MFF) alleging that the PAC had not reported a pledge from a donor that paid for an IE of \$999,245 against Gov. Janet Mills

Ms. Salley stated MFF's expenditure was an enormous amount of money in Maine politics. It was clearly seeking to influence the election, and the reporting was made in a way that prevented the public from knowing where the funding came from for several weeks until just days before the election. She stated it defies logic that without any pledge or commitment of funds before October 1 the PAC secured and paid a vendor essentially \$1,000,000 on October 5 for an ad that was created and aired immediately afterwards. Ms. Salley asked the Commission to investigate to prevent entities from playing games to conceal funding sources for expenditures.

Mr. Joseph Vanderhulst, attorney for MFF, said that the complaint did not show sufficient evidence or grounds to believe a violation occurred. The PAC reported all contributions and expenditures in a timely manner according to Maine law. He said the complainant's issue seems to be more with the reporting schedule. The reporting did not require real-time disclosure of contributions until closer to the election.

Ms. Neumann moved to direct staff to gather more information to be considered at the November 30 meeting. The motion was seconded by Mr. Marble. The motion passed 5-0.

5. Proposed Rulemaking

Mr. Wayne proposed moving forward with a rulemaking relating to the Commission's hearing procedures, and the Maine Clean Election Act (MCEA) program. Commissioners suggested wording changes to the amendments.

Mr. Schneider made a motion for the Commission to move ahead with the rulemaking. The motion was seconded by Ms. Neumann. The motion passed 5-0.

Adjournment

Mr. Schneider made a motion, seconded by Ms. Neumann, to adjourn. The motion passed 5-0. The meeting adjourned at 12:48 p.m.

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