

Minutes of the January 23, 2015, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: Walter McKee, Esq., Chair; Michael T. Healy, Esq.; Margaret E. Matheson, Esq.; André G. Duchette, Esq.; Hon. Richard A. Nass

Staff: Jonathan Wayne, Executive Director; Phyllis Gardiner, Counsel

Commissioner McKee convened the meeting at 9:02 a.m.

The Commission considered the following items:

1. Ratification of Minutes of December 22, 2014 Meeting

Ms. Matheson moved to accept the minutes. Mr. Nass seconded. Motion passed (5-0).

2. Public Hearing on Proposed Changes to Commission Rules

Robert Howe appearing on behalf of his client, Maine Citizens for Clean Elections, said the Commission should first address whether the practice of governmental entities providing assistance to campaigns should be allowed before promulgating a rule regarding how to report the donations of goods and services by governmental agencies.

Mr. McKee indicated that written comments could be submitted by 5:00 p.m. on February 2, 2015.

3. Potential Legislation on Contribution Limits to Candidates

The Commission considered various options as proposed by the staff to change the contribution limits for candidates in light of *Woodhouse, et al. v. Maine Commission on Governmental Ethics and Election Practices, et al.*

Mr. Wayne said that the Maine Citizens for Clean Elections and Benjamin Grant, Esq., provided written comments.

Representative Robert A. Foley commented that the contribution limits seemed to work well and that the Commission should perhaps just address the issue as it concerns independent candidates rather than make major changes to the existing system of contribution limits. He said that he thought the simplest and best solution is to allow independent candidates to raise contributions for both the primary and general elections.

The Commission directed Mr. Wayne to draft a memorandum on the possible options to amend the statutory provisions on contribution limits for candidates in order to address the issues raised in the federal court decision and to deliver the memorandum to the Joint Standing Committee on Veterans and Legal Affairs.

4. Complaint by Rep. Karen Gerrish on Mailings

Mr. Nass recused himself from consideration of this matter due to his involvement with the Gerrish campaign during the election and because the other parties to the matter are neighbors.

William Logan, Esq., appeared on behalf of Representative Gerrish. He said that the ever-changing story that Mr. Driscoll has told warranted further investigation by the Commission. He said it was not certain that the information that the Commission currently had was sufficient to determine whether a violation did in fact occur.

The Commission discussed whether the record before them was sufficient to proceed or whether additional investigation was warranted.

Mr. Healy moved that the Commission not undertake any further investigation. Mr. Duchette seconded. The motion passed. (4 – 0, Mr. Nass recused himself from this matter.)

Mr. McKee moved that, based on the record, there is adequate evidence to find that no violation occurred. Mr. Duchette seconded. The motion passed. (4 – 0, Mr. Nass recused himself from this matter.)

5. Request for Waiver of Penalty for Late Filing, and Disclaimer Violation – Gordon Colby

On October 28, 2014, Gordon Colby of Waldoboro arranged for a mailing opposing the re-election of State Representative Jeffrey Evangelos of Friendship (District 91). He was seven days late filing a financial report of the independent expenditure. He requested a waiver of the preliminary late-filing penalty of \$85.12. In addition, Rep. Evangelos requested that the Commission consider finding Mr. Colby in violation for not including a required statement in the mailing that it was not paid for or authorized by any candidate.

Russell Pierce, Esq., appeared before the Commission on behalf of his client, Rep. Jeffrey Evangelos, who was also present. He said the purpose of the disclosure law is to disclose to the public who paid for a communication, and Mr. Colby's use of an address that is not his home address is misleading. Mr. Pierce said the communication was timed to coincide with another mailing and such that the candidate could not respond to it. Mr. Colby is familiar with the disclosure law based on his involvement with registered Maine PACs. It is significant that the Legislature raised the penalty to a maximum of \$5,000. The Commission should impose that maximum penalty. Mr. Pierce said that, based on the record, it appears that there was an intentional violation of the law.

Rep. Evangelos said that the Commission should investigate whether Mr. Colby was the sole source of the funds for the communication. While he understands that the Commission's jurisdiction does not extend to the content of the communication, such false, reckless and inflammatory statements as contained in Mr. Colby's mailer are reminiscent of some to the darkest chapters of American political history. Mr. Colby was not inexperienced; he was the managing director of the Maine Conservative PAC.

William Logan, Esq., appeared on behalf of Gordon Colby. He said Mr. Colby does receive mail at his work mailing address. Mr. Colby was not involved in the mailings the Maine Conservative PAC did but was only involved in fundraising for the PAC. Nonetheless, his client agrees that there was not adequate disclosure. There is no evidence of coordination for good reason: there was no coordination with Rep. Evangelos' opponent or another PAC. Mr. Logan argued that there is no evidence to support the request for an investigation. Mr. Logan said that Mr. Colby paid the entire amount for the communication; however, Mr. Logan said he did not independently verify that. He requested that the Commission find a violation but impose no penalty or a minimal penalty of no more than \$50.

Mr. Nass said that the Commission does not have jurisdiction over the content of campaign communications. He said he supports the staff recommendation.

Mr. Duchette moved that the Commission find a violation for a late-filed independent expenditure report and of the disclosure requirement. Ms. Matheson seconded. The motion passed. (5 – 0)

Mr. Duchette said that he did find the argument that Mr. Colby was inexperienced persuasive. Ms. Matheson also thought that Mr. Colby's prior experience with a PAC indicated to her some familiarity with campaign finance law.

Mr. Healy said that he could not find an intentional violation of the disclosure law based on the record.

Mr. Duchette moved that the Commission impose a penalty of \$200 for the violation of the disclosure requirement and a penalty of \$85.12 for the late-filed independent expenditure report. Ms. Matheson seconded. The motion passed. (5 – 0)

6. Request for Waiver of Penalty for Late 24-Hour Report – William DeSena

Mr. Wayne explained that Mr. DeSena was a first-time candidate for State Senate, District 29 from Cape Elizabeth. He filed two 24-Hour Reports late resulting in preliminary penalties of \$1,817.04. Mr. DeSena requested a waiver or reduction of the penalties due to the inexperience of the candidate and because the penalties are disproportionate the size of the campaign and to the harm to the public. The staff recommended a partial waiver of the penalty and reducing it to \$200 which was consistent with penalties in other matters.

William Logan, Esq., appeared on behalf of Mr. DeSena. He said that his client agreed with the staff recommendation.

Ms. Matheson moved that the Commission grant a partial waiver of the penalty and reduce it to \$200. Mr. Nass seconded. The motion passed. (5 – 0)

7. Request for Waiver of Penalty for Late 24-Hour Report – Owen Hill

Owen Hill was a 2014 candidate for State Senate, District 28 from Portland. On October 24, 2014, he made an expenditure of \$1,273.36 for telephone communications to voters. He was required to report the payment in a 24-Hour Report, and filed the report late. The preliminary penalty for the late report was \$662.14. Mr. Hill requested a waiver because the violation was caused by poor communication with a campaign contractor and the candidate's lack of campaign experience.

Mr. Hill was not present at the meeting. In response to a question from Mr. McKee, Mr. Wayne said that he had spoken with Mr. Hill by telephone and his impression was that Mr. Hill found the staff recommendation acceptable; however, Mr. Hill did not expressly say that.

Mr. Nass moved that the Commission grant a partial waiver of the penalty and reduce it to \$100. Mr. Duchette seconded. The motion passed. (5 – 0)

8. Request for Waiver of Penalty for Non-Compliant Report – Hon. John Cleveland

Senator John Cleveland was a candidate for State Senate, District 20 in the November election. His 11-Day Pre-General Report was considered late because it did not substantially conform to the disclosure requirements. The report did not include \$8,787.01 in expenditures made during the period. The preliminary penalty was \$5,000. The Commission staff noticed a discrepancy when the campaign filed its final report in December. The campaign volunteer who filed the report conceded that two expenditures were missing from the report as originally filed. Senator Cleveland requests a waiver, because the violation was unintentional, and the penalty is disproportionate to the harm to the public caused by the late disclosure.

Senator Cleveland and Richard Trafton, the treasurer for Senator Cleveland's campaign, appeared before the Commission. Mr. Trafton said that the campaign recognized the discrepancy and amended the report. He also said that this was the first time in Senator Cleveland's five campaigns that this kind of reporting error occurred.

Senator Cleveland said that the volunteer made an honest error. He said that the fact that he had to appear before the Commission for a campaign finance reporting violation was a more significant penalty and deterrent than the monetary penalty.

Mr. Healy moved that the Commission grant a partial waiver of the penalty and reduce it to \$250. Mr. Nass seconded. The motion passed. (5 – 0)

9. Request for Waiver of Penalty for Non-Compliant Report – Rep. Dillon F. Bates

Representative Dillon F. Bates was a candidate for Maine House of Representatives from Westbrook. His campaign filed its finance reports on time, but two of the reports substantially under-reported the expenditures for the report periods. These reports were considered late, because a total of 11 expenditures were omitted from the reports. The preliminary penalties total \$5,119.70. Rep. Bates requested a waiver based on the inexperience of the campaign and the disproportionate size of the penalty.

Rep. Bates was present and explained to the Commission that the late reporting was caused in part because the campaign's bank had not provided the campaign with debit cards until very late in the election cycle. He and his partner made campaign purchases using their own credit cards. In the course of the campaign, some receipts were not given to the treasurer in a timely fashion and some receipts were lost. He said there was no intent to conceal information or to mislead the voters or his opponent.

In response to a question from Mr. Nass, Rep. Bates said that he did have some initial roadblocks when opening the campaign bank account because the bank said that it did not handle political campaign accounts.

Mr. Healy moved that the Commission grant a partial waiver of the penalty and reduce it to \$150. Mr. Nass seconded. The motion passed. (5 – 0)

10. Request for Waiver of Penalty for Non-Compliant Report – John Michael

John Michael was a candidate for Maine House of Representatives, District 62 from Auburn. His campaign filed its campaign finance reports on time, but the 11-Day Pre-General Report substantially under-reported the campaign's receipts during the reporting period. The former treasurer did not include a

loan of \$1,000 received from the candidate. The preliminary penalty was \$1,911. Mr. Michael requested a waiver, because the violation was unintentional, and the penalty is disproportionate to the campaign and public harm caused. Mr. Wayne said that Mr. Michael, in his letter, requested a reduction of the penalty to \$100.

Neither Mr. Michael nor a representative was present at the meeting.

Mr. Duchette moved that the Commission grant a partial waiver of the penalty and reduce it to \$150. Ms. Matheson seconded. The motion passed. (5 – 0)

11. Request for Waiver of Penalty for Non-Compliant Report – Rep. James Gillway

Representative James Gillway was a candidate for the Maine House of Representatives, District 98 from Searsport. His campaign filed its 11-Day Pre-General Report before the deadline, but the report did not include expenditures for two mailings costing \$3,177.40. The report is considered late because it did not substantially conform to the disclosure requirements. The preliminary penalty is \$1,777.85. Rep. Gillway requested a waiver, because the violation was unintentional, and because he had filed the report early and did not realize the expenditure was supposed to be reported in the 11-Day Pre-General Report. Mr. Wayne said that the staff found Rep. Gillway's explanation plausible and recommended a reduction of the penalty.

Rep. Gillway was present and told the Commission that it was an inadvertent error that caused the expenditures not to be included in the report. He said that, because he had already filed the 11-Day Pre-General Report, he was not thinking that the Bangor Letter Shop expenditure belonged in that report. He said that he accepted the staff recommendation.

Mr. Nass moved that the Commission grant a partial waiver of the penalty and reduce it to \$100. Ms. Matheson seconded. The motion passed. (5 – 0)

12. Request for Waiver of Late-Filing Penalties – Eliot Cutler

Eliot Cutler was a candidate for Governor of Maine in the 2014 election. His campaign filed two campaign finance reports late: one 24-Hour Report (54 days late) and the 42-Day Post-General Report (one day late). The preliminary penalties for the two late reports total \$8,388.49. The Cutler campaign requested a waiver

of the preliminary penalty for the late 24-Hour Report because the violation was unintentional and was the only transaction missed in the 24-hour reporting period. The Cutler campaign requested a waiver of the preliminary penalty for the late 42-Day Post-General Report because a *bona fide* effort was made to file the report, and little to no public harm resulted in the report being several hours late. Mr. Wayne said that the Cutler campaign was particularly conscientious about filing its reports and these late filings were anomalous.

Justin Schair appeared before the Commission. Mr. Schair was the Deputy Campaign Manager for the Cutler campaign. He said that campaign staff had gone to great lengths throughout the election to make sure that the reports were complete and accurate and filed on time. He believes that the reason for the late 42-Day Post-General Report was a technical issue with the e-filing system. The campaign staff person who was responsible for filing the report was simultaneously logged into the Commission's e-filing system for the Cutler campaign and an unrelated political action committee. The staff person believes that he filed the report at 5:30 p.m. on the due date. However, the e-filing system failed to file the report.

Regarding the late 24-Hour Report, Mr. Schair said that the campaign thought the expenditure was routine and did not have to be reported in a 24-Hour Report but accepts the Commission staff assessment that it should have been reported. He said that the campaign took its responsibilities for full and transparent reporting seriously.

Mr. Nass moved that the Commission grant partial waivers of the penalties and reduce the 24-Hour Report penalty to \$200, and the 42-Day Post-General Report penalty to \$400. Mr. Healy seconded. The motion passed. (5 – 0)

13. Request for Waiver of Late-Filing Penalty – Anne PAC

On October 23, 2014, the Anne PAC made a \$3,500 expenditure in the form of a contribution to the Senate Democratic Campaign Committee PAC. It was required to disclose this contribution in a 24-Hour Report by October 24, 2014, but did not do so until December 15, 2014. The preliminary penalty was \$1,820. The PAC requested a waiver of the preliminary penalty based on the disproportionality of the penalty to the experience of the PAC's treasurer and the harm caused to the public by the late disclosure.

Senator Anne Haskell appeared before the Commission and said that the PAC accepted the staff's recommendation.

Mr. Duchette moved that the Commission grant a partial waiver of the penalty and reduce it to \$250. Ms. Matheson seconded. The motion passed. (5 – 0)

14. Request for Waiver of Late-Filing Penalty – Environment Maine PAC

This matter was rescheduled to the February meeting.

15. Request for Waiver of Late-Filing Penalty – AFL-CIO Political Education PAC

The AFL-CIO Committee on Political Education PAC (the PAC) filed its 11-Day Pre-General report by the deadline of October 24, 2014, but this report did not include the substantial general treasury transfer the PAC received from the general treasury of the Maine AFL-CIO. As a result, the report was considered late. The preliminary penalty was the statutory maximum of \$10,000. The PAC requested a waiver of the preliminary penalty, arguing that the failure to fully report was an oversight by the PAC office staff who did not understand that a general treasury transfer would count as a contribution received and that the harm to the public resulting from this misreporting was minimal. All the expenditures for the reporting period were timely reported and the PAC's reported cash balance was sufficient to support the expenditure it made even without the general treasury transfer.

Matt Schlobohm, Executive Director of the Maine AFL-CIO, appeared before the Commission and said that the PAC accepted the staff's recommendation.

Ms. Matheson moved that the Commission grant a partial waiver of the penalty and reduce it to \$1,000. Mr. Duchette seconded. The motion passed. (5 – 0)

16. Request for Waiver of Late-Filing Penalty – Workers Voice (Maine) PAC

Between October 28, 2014 and November 2, 2014, the Workers' Voice (Maine) PAC reported making a series of five independent expenditures in opposition to the LePage gubernatorial campaign. It was required to report these payments each day between October 29, 2014 and November 3, 2014 but did not do so until November 7, 2014. Additionally, on October 28, 2014 the PAC received a contribution of

\$7,155.72 from its federally-registered Workers' Voice parent PAC. It did not include this contribution on the 24-Hour Report it filed on October 29, 2014 until it amended that filing on November 11, 2014. The preliminary penalties for the six late reports totaled \$6,518.11. The PAC requested a waiver of the preliminary penalties.

Mr. Duchette moved that the Commission grant a partial waiver of the penalty and reduce it to \$1,000. Ms. Matheson seconded. The motion passed. (5 – 0)

17. Increase in Contribution Limits due to Inflation

Every two years after a general election, the Commission is required to calculate whether a change in the contribution limits for candidates is warranted due to inflation. Based on the calculations using the inflation rate from the U. S. Department of Labor, Bureau of Labor Statistics, the Commission staff recommended increases to the limits for gubernatorial candidates (from \$1,500 to \$1,575), county candidates (from \$750 to \$775) and municipal candidates (from \$750 to \$775). The contribution limit for legislative candidates would remain unchanged at \$375 per election.

Mr. McKee moved to adopt the contribution limits as calculated by the staff. Mr. Healy seconded. The motion passed. (5 – 0)

18. Potential Change in Policy on Requests for Waivers of Late-Filing Penalties

Mr. McKee said that the Commission appreciates the staff's effort to compile the information about the penalties assessed by the Commission in the past. He said that he was fine with the way the process works now. Each case is different and requires due consideration based on the facts of the case. The staff provides its recommendation based partially on past practices and the specific of the case. While it may not be a perfect system for calculating penalties, it works.

Ms. Matheson requested that the staff keep the list of penalties up-to-date for future use.

Mr. Nass asked whether the Commission staff verifies that mailers and similar items that are purchased late in the campaign are actually delivered by the vendors. Mr. Wayne said that the Commission auditor audits

25% of MCEA candidates; however, that process is limited to verifying that the candidate has the documentation to support the expenditure.

Mr. Healy made a motion, seconded by Mr. Nass, to adjourn. The motion passed. The meeting adjourned at 11:45 a.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director