



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

Minutes of the March 3, 2017, Meeting of the  
Commission on Governmental Ethics and Election Practices  
45 Memorial Circle, Augusta, Maine

Present: Margaret E. Matheson, Esq., Chair; William A. Lee III, Esq.; Meri N. Lowry, Esq.; Hon. Richard A. Nass; and Bradford A. Pattershall, Esq.

Staff: Jonathan Wayne, Executive Director

Commissioner Matheson convened the meeting at 9:05 a.m.

The Commission considered the following items:

**1. Ratification of Minutes of January 30, 2017 Meetings**

Mr. Lee made a motion to adopt the January 30, 2017 minutes as written. Mr. Nass seconded the motion. Motion passed (5-0).

**2. Request for Waiver of Late-Filing Penalty – Leadership for Maine’s Future PAC**

Mr. Wayne said the Leadership for Maine’s Future PAC (the “PAC”) made a \$3,000 expenditure to the Maine Republican Party on October 26 but did not file the required 24-Hour Report. There was a misunderstanding about who should file this report. The treasurer for the PAC only files the regular campaign finance reports and another person is responsible for filing all other reports. The preliminary penalty is \$3,240 and staff recommended reducing it to \$500.

Joshua Tardy, Esq., counsel for the PAC, appeared before the Commission. He agreed with Mr. Wayne’s representation of this matter and said he had no objection to the staff recommendation.

Mr. Lee asked if this was the PAC’s first offense. Mr. Wayne said it was.

Mr. Lee made a motion to reduce the statutorily calculated penalty of \$3,240 to \$500 as recommended by the Commission staff. Mr. Nass seconded the motion. Motion passed (5-0).

**3. Request for Waiver of Late-Filing Penalty – Prosperity for Maine’s Future PAC**

Mr. Wayne said the Prosperity for Maine’s Future PAC (the “PAC”) is the leadership PAC of Representative Matthew Pouliot. The PAC made a \$5,000 contribution to another PAC on October 28 but did not file the required 24-Hour Report. At the time of the filing deadline, Rep. Pouliot was preparing for a trip and believed the recipient PAC would file any required reports.

Rep. Matthew Pouliot appeared before the Commission. He said he believed the waiver request letter he submitted provided sufficient information about this matter but he was happy to answer any questions the Commissioners had.

Ms. Matheson asked how long Rep. Pouliot had been a principal with the PAC. Rep. Pouliot said he started the PAC in 2012 or 2013. In response to a question from Ms. Matheson, Rep. Pouliot said he had not filed any 24-Hour Reports in the past.

Mr. Nass asked if the PAC had a treasurer. Rep. Pouliot said it did but the treasurer was a treasurer in name only; Rep. Pouliot files all the PAC reports. He said he spoke with the recipient PAC and understood that they would file all required reports. Rep. Pouliot said he was not aware there was a problem until he went to file his December report and saw the warning about a missed report. He said he filed the report and then contacted the Commission about the penalty.

Ms. Lowry said the recipient PAC was now terminated and asked why Rep. Pouliot had made this contribution. Rep. Pouliot said he had agreed to make this contribution because the recipient PAC had an opportunity to do a bulk mailing at a discounted rate. He said he did not know why the PAC had terminated. Ms. Lowry asked if the mailing benefited his campaign. Rep. Pouliot said it did not because he ran unopposed.

Rep. Pouliot said he was unaware of any proposed changes to the 24-hour reporting requirement but thought it would be good to review this procedure. He said he thought the 24-hour reporting requirement was a well-intentioned requirement so that the public knows how money is being spent in the last two weeks before an election. However, the reporting requirement can be difficult to manage for candidates who file their own reports because it coincides with the time that they are out campaigning in their districts.

Mr. Lee made a motion to reduce the statutorily calculated penalty of \$4,900 to \$500 as recommended by the Commission staff. Mr. Pattershall seconded the motion. Motion passed (5-0).

#### **4. Request for Waiver of Late-Filing Penalty – Hon. Maureen Terry**

Mr. Wayne said Rep. Maureen Terry incurred a \$4,100 debt to a mailhouse on August 17, which she failed to disclose in the 42-Day Pre-General Report and the 11-Day Pre-General Report. Rep.

Terry amended both reports on January 11, 2017 after Commission staff contacted her about a large expenditure she recorded in the 42-Day Post General Report to partially pay this debt.

Rep. Maureen Terry appeared before the Commission. She said she had not realized that she needed to report the debt when it was incurred and not when the invoice was paid.

Ms. Matheson said there are multiple references about debts in the various guidance materials put out by the Commission. Rep. Terry said she had not paid as much attention to those materials as she should have.

Ms. Lowry said it was important to note for the record that the staff recommendation included the collapsing of the two violations for penalty calculation purposes because they stem from the same set of facts and timeframe. Ms. Matheson said she was initially concerned by the recommendation but given the circumstances she understood the recommendation. Mr. Nass expressed concern about setting a precedent with this reduction but said he believed it was the right thing to do. Mr. Lee said he supported the staff recommendation because she was a first time candidate. He said he would not support the staff recommendation if she were a more experienced candidate because this expenditure represented 75% of her total campaign spending and the public would not be aware of the purchase in a timely fashion because it was not correctly reported.

Ms. Matheson asked if she had a treasurer. Rep. Terry said her husband had served as treasurer, mostly in name only, and said she would find someone more qualified the next time. Mr. Nass said if Rep. Terry had run as an MCEA candidate her treasurer would have had a very different role.

Mr. Nass made a motion to combine the two penalties and adopt the staff recommendation. Mr. Lee made a friendly amendment to the motion to add the following: reduce the statutorily calculated penalty of \$10,000 to \$200 as recommended by Commission staff. Ms. Lowry seconded the amended motion. Motion passed (5-0).

##### **5. Recommended Penalty for Maine Clean Election Act Violation – Hon. Dillon Bates**

Mr. Wayne said Representative Dillon Bates ran for re-election as a MCEA candidate for House District 35. He said Rep. Bates failed to return his surplus MCEA funds despite multiple staff attempts to contact him. Rep. Bates has now returned the surplus funds and has been very responsive to staff contacts. Mr. Wayne said that, in an attempt to verify the amount of surplus

funds, staff had requested Rep. Bates' bank records. He said the review of the bank records indicated that the surplus funds were in fact in the account and the staff did not see any evidence of misuse of MCEA funds. However, the review had raised additional questions and staff recommended that this matter be tabled and requested that the Commissioners authorize the staff to conduct further investigation into Rep. Bates' 2016 campaign and, if necessary, his 2014 campaign.

Mr. Nass expressed concern that if they authorized an investigation, the penalties would continue to accrue. Mr. Wayne said the Commissioners have discretion over the penalty assessment. He said he believed it would be beneficial for the Commissioners to have all the facts before them at once. Mr. Wayne said that Rep. Bates had recently hired counsel and they have not been given a lot of time to respond to these potential penalties.

Mr. Lee agreed it could be beneficial to consider all the issues at one time if the staff obtained more information that impacted the underlying issue. He said he disagreed that Rep. Bates had not been given sufficient time to prepare a response regarding the failure to return surplus funds given the number of times staff had tried to contact him. Mr. Lee asked whether there was a downside to hearing the matter regarding the delay in returning surplus funds at this meeting and dealing with any other issues at later meeting. Mr. Wayne said that Rep. Bates received notice of the specific legal violation only nine days before the meeting and generally the Commission has given the candidate or committee more time to prepare a response. Ms. Matheson agreed that Rep. Bates had received multiple warnings and some of those did include language about a potential violation and penalty.

Ms. Matheson asked about the commingling issue raised after the review of the bank records, noting that on page two of the staff memo there was a reference to the Candidate Guidebook that advises candidates to return actual balance of unspent funds minus personal funds used to keep the account active and avoid fees. Mr. Wayne said Commission staff has had an unofficial practice of allowing candidates to maintain a small amount of personal funds in their campaign bank accounts in order to keep the account active. He said the current rulemaking has a specific provision regarding this practice. Ms. Matheson asked if they were required to report this money. Mr. Wayne they are not required to report it because there is no category for it. He said candidates handle this in a variety of ways and that some candidates do remove the personal funds once they receive their seed money. Mr. Nass asked how much in personal funds was necessary to keep the bank account open. Mr.

Wayne said the minimum amount varies. He said he believed the rulemaking language was framed such that the candidate could only keep just enough personal funds in the account to meet the minimum requirements of the financial institution.

Mr. Lee asked about the deadline for return of funds in one of the staff emails. Emma Burke, the Candidate Registrar assigned to Rep. Bates this election cycle, said it is their practice to set a firm deadline when dealing with candidates because they have found that usually works well.

Mr. Lee asked if there are any past cases of failure to return funds. Mr. Wayne said this is the first time Commission staff has pursued penalties for failure to return surplus MCEA funds without any other violations.

Katherine Knox, Esq., counsel for Rep. Bates, appeared before the Commission. She said she has only been involved in this matter for a couple of days. Rep. Bates had contacted her after receiving the Commission's request for bank records. Ms. Knox said they are in the process of coordinating a meeting with Commission staff to discuss the preliminary findings. Ms. Knox said she believed it would be good to consider all the issues at the same time because they are interconnected and have an impact on the reason for and the length of the delay in returning the unspent funds.

Ms. Matheson asked if they decide to table this matter and authorize an investigation into the 2016 campaign, and possibly the 2014 campaign, if enough notice had been provided to Ms. Knox and Rep. Bates about this. Mr. Wayne said he did not believe notice was an issue because it is within the Commission's discretion to initiate an investigation.

Mr. Lee asked if the next meeting is scheduled for the end of April, if that would be sufficient time to prepare a response. Ms. Knox said it would as long as she did not run into any problems obtaining the records. Mr. Wayne agreed that a late April meeting would be fine as long as the meeting with Ms. Knox and Rep. Bates happens within the next few weeks.

Mr. Pattershall said the penalties in this case could be severe and there could be a referral to the Attorney General's office, so it would be good to have a complete picture before making a final decision. Mr. Lee agreed and said they have broad discretion in determining the penalty amount.

Ms. Matheson made a motion to table this matter of potential MCEA violations by Rep. Dillon Bates and to authorize staff to conduct further investigation into Rep. Bates' 2016 campaign and, if necessary, his 2014 campaign. Mr. Nass seconded the motion. Motion passed (5-0).

Mr. Lee requested that staff track the time spent on this case because it may factor into their decision on this case. Mr. Wayne said staff spent about six hours on this issue prior to it becoming an enforcement matter and, after reviewing the bank records, a total of 15-18 hours.

## **6. Administrative Update**

*2016 MCEA Audit Program.* Mr. Wayne provided an overview of the audit program. He said Runyon, Kersteen and Ouellette had been selected to conduct this year's audits. Mr. Wayne said 20% of MCEA candidates are randomly selected for audit. He said notifications have been sent and the auditor has begun receiving documents for review. Ms. Matheson asked if the selection process is completely random. Mr. Wayne said it is but a few candidates are subject to for-cause audits every election cycle. Mr. Nass asked if the auditor uncovers unallowable expenditures. Mr. Wayne said there have been a few cases of candidates reporting fraudulent expenditures but most of the audits do not find any serious issues. Mr. Nass asked how it could be discovered if a candidate is using personal funds to make purchases of unallowable items. Mr. Wayne said that would be hard to detect but candidates usually watch each other and report problems.

*Biennial Budget.* Mr. Wayne said he had provided a projection for the MCEA program participation rates and expenses for the 2018 election cycle to the Appropriations Committee. He said the Commission staff does anticipate a shortfall because 2018 is a gubernatorial election year and the potential for a number of gubernatorial candidates to use the program. He said he had submitted a proposal to receive an advance of the annual transfer and requested a one-time additional revenue disbursement. Mr. Nass said he believed there was a bill pending to suspend the MCEA gubernatorial program. Mr. Wayne said the legislature could suspend the gubernatorial program or it could modify the candidate payments.

Mr. Nass made a motion, seconded by Ms. Lowry, to adjourn. The motion passed. The meeting adjourned at 10:24 a.m.

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