



Minutes of the June 29, 2016, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: Margaret E. Matheson, Esq., Chair; Michael T. Healy, Esq.; William A. Lee III, Esq.;
Meri N. Lowry, Esq.; Hon. Richard A. Nass

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

Commissioner Matheson convened the meeting at 9:00 a.m.

The Commission considered the following items:

1. Ratification of Minutes from the May 25, 2016 Meeting and June 14, 2016 Special Meeting

Mr. Lee moved to accept the May 25, 2016 minutes as amended. Mr. Healy seconded. Motion passed (4-0; Mr. Nass abstained).

Mr. Nass moved to accept the June 14, 2016 minutes as amended. Mr. Healy seconded. Motion passed (5-0).

2. Legislative History of the House Party Exception

Mr. Wayne stated he had received copies of the chapter law history from the Legislature's Law & Reference Library. He reported that the original bill proposed to the Maine Legislature closely tracked the federal law. The bill had a provision that required the candidate-related activity to occur on the volunteer's residential premises in order for the incidental costs of a house party to be excluded from the definition of expenditure. He stated this provision was removed from the amended bill, which became law in 1976. Under current Maine election law, there is no location requirement in the house party exception.

Ms. Matheson asked if there was anything in the statement of fact or the bill's summary that would provide clarification. Mr. Wayne stated there was not. Ms. Matheson stated the historical materials were helpful but ultimately did not provide much clarity on this matter. Mr. Nass asked why there was not more detailed historical information on file. Ms. Gardiner stated this was not uncommon because most of the work is done in committee work sessions, which are not recorded and, in the past, the working papers were not preserved.

3. Potential Reopening of Consideration of Mailings in Support of Hon. Benjamin Chipman

Mr. Wayne stated that at the May 25th meeting, the Commissioners considered whether a mailing regarding two house parties financed by 10 volunteers was a contribution to Rep. Chipman's campaign. At that meeting, the following motions were considered: a motion for no further investigation passed (4-0); a motion to find a violation failed due to lack of a second; a motion to find no violation failed due to lack of a second; a motion to table the matter failed due to lack of a second; and a motion to close the matter passed (4-0).

At the June 14th Special Meeting, Commissioner Healy made a motion, seconded by Mr. Lee, to reopen this matter. Mr. Healy then made a motion to table the matter until the next regular meeting. Mr. Nass stated he was not at the May 25th meeting. However, he had listened to the audio of the meeting and, unless someone objected, he intended to participate in the discussion of this matter. No objections were made. Ms. Matheson asked what the procedure was to consider the motion to reopen the investigation. Ms. Gardiner stated that the motion had been tabled until this meeting and by convening the meeting with this item on the agenda the Commission could take action on the motion.

Commissioner Healy stated that after the May 25th meeting he was bothered that they had not made a decision on whether the use of the house party exception, as applied in this case, was acceptable. He was concerned that because they had not made a finding, other candidates may use the exception in a similar fashion as Rep. Chipman. He stated he reviewed the statutes and found that subsection 6 of section 1125 of the Maine Clean Election Act is very clear that a certified MCEA candidate may not accept any contributions or make expenditures with private funds unless they receive specific authorization by the Commission. Mr. Healy stated the Commission never authorized the use of private funds for this mailing. He stated that the Commission should make it clear whether Rep. Chipman's use of the house party exception is permissible.

Ms. Matheson stated she was aware of the restriction on MCEA candidates accepting contributions but pointed out that the law excludes the cost of house parties from the definition of contribution. She stated that, while the boundaries of the exception may have been stretched in this case and while they may want to address what appears to be a loophole, her position that there was not a

violation in this case had not changed and she would not support the motion to reopen the investigation.

Mr. Nass stated he has held house parties in the past and believes the way the exception was used in this case to be outside of the acceptable parameters. He stated he believed house parties are supposed to be neighborhood events and doing a district-wide mailing that purports to be an invitation is beyond the original intention of the exception. Mr. Nass stated he supported Mr. Healy's motion and expressed concern that if something is not done other candidates will exploit this loophole. Mr. Nass said sending over 5,000 pieces of mail district-wide is a political mailing, not a house party invitation.

Mr. Lee stated they had agreed the statutory language needed clarification. He said their options were to either reopen this matter to make a finding or not reopen the matter and instead address a rule change to close this loophole. Based on his review of the two options provided by staff for a proposed rule change, Mr. Lee thought the language in the first proposal was acceptable but the second proposal went beyond the scope of the statute. He stated it was important to ensure volunteers are actually providing a service at the event and not just writing a check. Mr. Lee stated he could not find that Rep. Chipman had violated the statute because of the way the statute is written; he would have given Rep. Chipman the same advice staff had.

Ms. Lowry expressed concern about reopening this matter without any new evidence being presented. She stated the matter had been fully discussed and she believed they had tried very hard to reach a majority if not actual consensus. Ms. Lowry said she was sympathetic to the fact that Rep. Chipman had sought and followed staff advice. She could not support the motion to reopen. She stated they all had concerns about how the house party exception was used. She thought it would be appropriate to initiate a rulemaking.

Ms. Matheson called for a vote on the motion to reopen. Motion failed (2-3; Ms. Matheson, Mr. Lee and Ms. Lowry opposed).

Mr. Healy asked whether the staff would give other candidates the same advice they had given Rep. Chipman. Mr. Wayne said the staff would advise against it based on the Commission's discussion

on this matter. Mr. Healy asked if staff would refer candidates seeking to use the house party exception to the Commission for pre-approval. Mr. Wayne said the Commission has not given such pre-approval in the past and it would depend on how the Commission wanted to proceed.

Mr. Lee stated that if another scenario similar to this one came up in the future, he would be taking a close look at what services the volunteers were actually providing in connection with the event.

4. Possible Rulemaking on House Party Exception

Ms. Matheson stated that at the May meeting there was some discussion about issuing advisory guidance to candidates on the house party exception. Mr. Wayne said he had suggested it but thought a rule change would be the better option. Ms. Matheson stated she was thinking they would do both and possibly even do an amendment to the statute – a three-pronged attack on the issue.

Mr. Nass stated the advice piece could simply be notification of the rulemaking. Ms. Lowry agreed and stated this would serve as advice to candidates until the rule is in effect.

Mr. Healy stated they have two proposed rules before them and asked if they could put both out for comment, schedule a public hearing, and adopt one or the other based on the public comments. Ms. Gardiner stated they could only propose one version of the rule amendment. The Commission needed to decide on the best proposal, send it out for public comment, and then it could make changes based on comments received.

Mr. Lee said he had made note of the definition of a host in one version of the rule amendment but noticed that the Maine Citizens for Clean Elections (MCCE) had proposed several modifications that clarified that definition. He asked if their proposed modifications were acceptable clarifications. Ms. Gardiner said she thought it did clarify who would be considered a host. She stated MCCE's proposed change avoids the need to determine the candidate's role and would specify that the volunteers sharing the cost of the invitations must be the individuals providing the real property.

Mr. Healy asked if MCCE's proposal was clear about the prohibition on MCEA candidates soliciting multiple private contributions. Ms. Gardiner stated the house party exception modifies the definition of the term contribution. Mr. Lee agreed and stated that if the cost fits within this

exception, then it is not a contribution. Ms. Gardiner agreed and stated the exception applied to MCEA and privately financed candidates. She stated this is an exception to the definition of contribution. If the activity falls within this exception, the MCEA candidate could ask volunteers to put on a house party. However, the proposed rule amendment would narrow the scope of individuals who could be considered volunteers.

Mr. Lee stated the rule amendment would ensure the volunteer is an integral part of the house party, not just an individual writing a check. Ms. Lowry expressed concern that the proposed changes do not address the issue of multiple house parties. Mr. Healy stated he did not have a problem with 10 individuals hosting 10 house parties as long as they are paying the costs associated with the house party and it costs no more than \$250. Mr. Nass agreed and stated it maintained the neighborhood concept which is integral to the house party exception.

Mr. Healy stated the problem is that an MCEA candidate can have 10, 20 or 50 people each contribute \$250 to hold one large party with multiple hosts at one location, effectively raising a certain amount of money the candidate can spend and not use their Clean Election funds. This would give them an advantage over other MCEA candidates. He stated he did not want to discourage house parties; he wanted to discourage MCEA candidates from raising money outside the Clean Election system and spending it.

Bob Howe, representing Maine Citizens for Clean Elections, appeared before the Commission. Mr. Healy asked if he could clarify the difference between MCCE's proposal and the staff proposal. Mr. Howe stated that changing "hosting" to "providing the real property" clarified what it means to be a host. Mr. Howe stated any volunteer could provide personal services under this exemption; however, the service they provide cannot be simply writing a check. He stated this exception applies to all candidates. The consequences are greater for an MCEA candidate because they could lose their funding, but it would be a minor violation for a traditionally funded candidate.

Mr. Healy asked if there was something about the staff proposal that MCCE found inadequate or would oppose. Mr. Howe stated they were simply trying to provide more clarity about what it means to be a host and when the participation of multiple volunteers would be acceptable. Mr. Healy asked if MCEA candidates could solicit private contributions under MCCE's proposal. Ms.

Gardiner asked if Mr. Healy meant private money, not private contributions, which is a defined term. Mr. Howe stated he did not believe the proposed language of the rule amendment addresses the question of whether a candidate can encourage people to put on a house party. He said MCCE does consider a house party to be a neighborhood activity organized by volunteers, not 50 volunteers paying for an event at the Civic Center.

Ms. Lowry stated she likes MCCE's version but would change the final sentence to "multiple volunteers may not share the cost of invitations." Mr. Healy asked what staff thought of MCCE's proposal. Mr. Wayne stated he liked it better than staff's proposal and he liked Ms. Lowry's suggested change, which makes it clear that only one individual can pay for the invitations. Ms. Matheson stated she would add "a single volunteer who will be providing the real property." Mr. Healy suggested they could take MCCE's version, add the suggested changes and put it out for public comment. Ms. Lowry suggested the second to last sentence should read: "The cost of invitations for a campaign event are exempt only if paid for by a single volunteer providing the real property."

Ms. Matheson stated they should review the proposal from the beginning. She noted that no concerns had been expressed about the first sentence. Ms. Lowry stated she had a concern with the use of "may be claimed." She stated this is a statutory exception to the definition of contribution and she thought the claim was being made by the candidate. Ms. Gardiner suggested using the word "applies" instead of "may be claimed." Ms. Lowry agreed and thanked Ms. Gardiner for the suggestion.

Mr. Wayne asked if they were deleting the final sentence. Ms. Matheson stated she did not have a problem with that because it reinforced the point they wanted to make. Ms. Lowry proposed the following sentence in response to the discussion about tightening the language: "The cost of invitations for a campaign event are exempt only if paid entirely by a single volunteer providing the real property for the event." Ms. Matheson proposed this alternative: "The cost of invitations for a campaign event may not be shared and are exempt only if paid for by a single volunteer providing the real property for the event." Mr. Lee questioned if it was necessary to include "may not be shared" as well as "can only be paid by a single volunteer." Ms. Matheson stated that if they were

proposing legislative language she would leave the “may not be shared” out but a rule is meant to be more detailed.

Staff provided the Commission with an updated version of the proposed rule change. Mr. Healy asked if Ms. Gardiner was comfortable with the proposal. Ms. Gardiner stated she was comfortable with the Commission putting it out for comment. She would need additional time to carefully review it; however, she believed it was a reasonable and defensible proposal.

Mr. Healy made a motion that the proposed rule be made available for public comment and scheduled for a public hearing. Mr. Lee seconded the motion. Motion passed (5-0).

After a discussion of available dates and the timing of the rulemaking process, it was agreed to schedule the public hearing for August 10th at 9:00.

Request to Investigate Horseracing Jobs Fairness BQC

Mr. Wayne stated that initially this item was a complaint filed by one of the consulting firms engaged as a subcontractor to gather signatures for the citizen initiative to establish a casino in York County sponsored by the Horseracing Jobs Fairness BQC (the “BQC”). Subsequently, another consulting firm filed a similar complaint. Both firms allege that the campaign finance report filed in April by the BQC was not in compliance with the Commission’s laws and rules. Mr. Wayne stated the BQC hired a local consultant/lobbyist, Cheryl Timberlake, to serve as treasurer. Ms. Timberlake hired an accounting firm, MacPage, to handle the financial and accounting matters for the BQC. Mr. Wayne stated the BQC contracted with Silver Bullet, LLC to oversee the petition process. Silver Bullet then subcontracted with three other firms, one of which is Encore Political Services, LLC, the complainant in this matter. Another was Lin Jen Corp.

Mr. Nass stated that the BQC report shows a payment was sent to Lin Jen Corp. but they are claiming they did not receive payment and questioned if this is a matter for the Attorney General’s office. Mr. Wayne clarified that both complainants allege they were not paid. Ms. Matheson stated the Commission does not have jurisdiction over payment disputes; it has oversight of campaign finance reporting.

Cheryl Timberlake, treasurer for the BQC, and Bruce Merrill, Esq., attorney for the BQC, appeared before the Commission. Ms. Timberlake stated one of the first steps she took as treasurer was to hire an outside accounting firm to assist with verification and documentation of the BQC's finances. She stated that everything reported in the campaign finance reports was verified by the accounting firm. Ms. Timberlake stated she could provide documentation that payments were actually made to both complainants.

Ms. Matheson asked if there was anything more that the BQC could have reported. Mr. Wayne stated the reporting appears to be complete at this time.

Mr. Nass asked if there were any liability issues for the Commission or the State regarding the consultants' complaints of non-payment. Ms. Gardiner stated the complaints arise out of the private contractual relationships between the parties. The State has no role to enforce payment in this matter; only to enforce the campaign finance law and ensure accurate reporting of contributions and expenditures.

Mr. Lee made a motion to find there are insufficient grounds to proceed with any further investigation. Mr. Nass seconded the motion. Motion passed (5-0).

Mr. Lee made a motion to find there are insufficient grounds to investigate the complaint filed by Lin Jen Corp. Mr. Nass seconded the motion. Motion passed (5-0).

6. Failure to Register as a Candidate – Jacob C. Johnston

Ms. Matheson stated she believed this item was resolved because the candidate was now registered. She asked if there should be a way to disqualify a person from being a candidate due to their failure to register with the Commission. Ms. Gardiner stated it may be possible to prohibit them from being an MCEA candidate. Mr. Lee asked why the penalty is only \$10 and stated that would not get anyone's attention. Mr. Wayne stated that a year and a half ago, the Commissioners had approved a statutory revision to raise the penalty to \$100, which was included in an omnibus bill ultimately vetoed by the Governor. He suggested this issue be revisited later this year. Ms. Gardiner suggested they could make the penalty \$10 per day after a certain number of days.

7. Policy on 24-Hour Reporting Requirement – Uncontested Primary Elections

Mr. Wayne stated that per statute, in the last 13 days before an election, candidates, PACs, BQCs and Party Committees are required to file a 24-Hour Report for any contribution or expenditure over \$1,000. Mr. Wayne stated the intent is to make the public aware of large transactions being made to influence them in the final days of an election. He stated there is a less compelling policy rationale for applying this statute to candidates who have no opponent in the primary election. Mr. Wayne stated it felt unnecessary to make these candidates file these reports but acknowledged that there is statutory language that may prohibit making any exception. Ms. Matheson stated she understood staff's frustration but she did not believe the statute allows the Commission to make an exception.

Mr. Lee stated this seemed like it would need legislative correction. Ms. Lowry said staff had previously suggested they could apply blanket reduction approach to these statutorily assessed penalties. Mr. Healy asked what the minimum penalty was. Mr. Wayne stated \$10 penalties are automatically waived but anything over that has to come before the Commission. Mr. Lee stated that, given how little experience he has with enforcement matters at this time, he is reluctant to waive anything without reviewing it. Ms. Matheson agreed and stated that individual factors can change how a matter is viewed. Ms. Lowry stated they could set a standard for the reduction amount in these cases for staff to apply and anything over that standard reduction would have to come before the Commission. Mr. Lee stated they could spend more time trying to figure out the reduction standard than actually reviewing the case. He suggested this issue be raised again after they have had an opportunity to review some of these cases.

Ms. Matheson asked if an email reminder was sent to the candidates about the 24-hour reporting period regardless of whether they are in a contested race. Mr. Wayne stated a reminder was sent. Ms. Matheson stated that based on that she did not see there was anything they could do given the language of the statute.

Ms. Matheson made a motion, seconded by Mr. Lee, to adjourn. The motion passed. The meeting adjourned at 11:14 a.m.

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