



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

Approved as amended: August 31, 2016

Minutes of the July 20, 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 June 29, 2016 Meeting**

Mr. Lee moved to accept the June 29, 2016 minutes as written. Mr. Nass seconded. Motion passed (5-0).

Mr. Lee raised the issue of a recent article in the Bangor Daily News regarding the recent matter involving Rep. Chipman. He took exception to the article's conclusion that the decision was made along party lines. Mr. Lee said the Commission is composed of two Democrats, two Republicans and an independent and it has been his experience that the Commission operates in the manner it was designed to operate, which is above the political fray. He concluded that anyone reading the article could get an inaccurate impression of how the Commission works. Ms. Matheson agreed with Mr. Lee and stated she has always approached all matters from a neutral standpoint and party affiliation has no bearing on her decisions.

**2. Request to Investigate Hon. Diane Russell's Use of Email List for Fundraising**

Mr. Wayne stated that the Commission, at its meeting on June 14, had voted to conduct further investigation regarding whether an email list was an unreported in-kind contribution from Rep. Russell to her Senate campaign. He stated that Rep. Russell explained in her response that there are actually three lists: the original list which was created in 2011, the enhanced list maintained by the Working Families PAC (the PAC) and a cleaned-up version of the original list used by the campaign. Rep. Russell has acknowledged that she should have reported an in-kind contribution of the email list to her Senate campaign.

Katherine Knox, Esq., representing Rep. Diane Russell, appeared before the Commission. Ms. Knox said that when she appeared before the Commission at the June 14<sup>th</sup> meeting, they had only two days to prepare a response to Mr. Hiltz's complaint. She said after that meeting, when they were able to do a more comprehensive review of the history of the email list, it became clear there were actually multiple versions of the original email list. Ms. Knox stated that the list used by the PAC, which was enhanced by Nation Builder, was maintained on a thumb drive and never accessed or used by Rep. Russell's campaign. She said Rep. Russell had begun the work of cleaning the original list herself, but then had her campaign pay approximately \$1,200 to update and clean the list so it could be used by the campaign for fundraising purposes. Ms. Knox said the campaign should have reported the donation of the original list to the campaign as an in-kind contribution from Rep. Russell on the January Semiannual Report and offered that Rep. Russell would be happy to amend that report. Ms. Knox said it was an understandable error because candidates are not accustomed to viewing something they own to be an in-kind contribution to their campaign. In addition, Ms. Knox said that Rep. Russell did not relinquish her ownership rights to the original list as a consequence of giving the list to her campaign and to the PAC.

Ms. Matheson asked how they knew the email list maintained by the PAC was never accessed by Rep. Russell's campaign. Ms. Knox explained that the campaign uses Action Network to maintain its version of the email list. The PAC list was maintained on Nation Builder. The upload history for the Action Network account does not contain a record of an upload of a list from Nation Builder. She said the campaign did try to upload the Nation Builder list but the upload failed and it made no further efforts to access that list. The three \$1.00 payments by the PAC to Action Network were merely unsuccessful attempts to set up a new management account with Action Network.

In response to a series of questions from Mr. Healy, Ms. Knox explained that there are three lists: 1) the personal list – the original list created by Rep. Russell on her own beginning in 2011 which contained mostly names and email addresses; 2) the PAC list – the list maintained by the PAC as enhanced using the services of Nation Builder which contained not only names and email addresses but also other demographic and voter information and information about the interests of the individuals on the list; 3) the campaign list – the list as enhanced and maintained by Rep. Russell's Senate campaign using the services of Action Network.

In 2013, Rep. Russell gave the PAC a copy of the personal list. The PAC used the services of Nation Builder to enhance the list with data about the individuals on the list to make it a more useful, targeted and powerful organizing tool. The PAC paid Rep. Russell to use the PAC list to engage in online organizing and advocacy. The PAC sold a copy of the list to Democrats.com for \$7,400. The PAC list contained about 100,000 to 110,000 names and email addresses.

Rep. Russell gave a copy of the personal list to her Senate campaign. The Senate campaign paid to have the list cleaned to remove names and email addresses that no longer worked and to update the list with current information.

Both the PAC list and the campaign list are based on the personal list but because of the enhancements to the PAC list by Nation Builder and the enhancements to the campaign list paid for by the Senate campaign, all three lists now contain different sets of data about the individuals on the lists.

Mr. Nass asked how are they to know it was not the PAC list that was transferred to the campaign. Ms. Knox stated she has seen the upload history into Action Network and the PAC list does not show up there. She explained that the PAC list has a lot of contact information on individuals who are involved on the national level in federal issues. For her Senate campaign, Rep. Russell needed a list that contained more local information which is why she enhanced the personal list, not the PAC list, with information about Democratic convention delegates, Bernie Sanders supporters, and other more locally-centered lists.

Mr. Healy stated he thought the most valuable aspect of the list was the email addresses, not the enhancements. Ms. Knox disagreed and explained that because of the enhancements, the PAC list could be used to send targeted emails to individuals based on a specific area of interest. The campaign list does not have that capability because it has only names and email addresses; none of the enhancements the PAC list has. In response to a question from Mr. Healy, Ms. Knox said the list used by the campaign was not the same as the PAC list. Mr. Healy asked how many names were on the campaign list. Ms. Knox said it averaged 130,000 names.

Mr. Healy asked Ms. Knox what kind of entity the PAC is – a corporation, a committee or membership organization of any kind. Ms. Knox stated it was not any of those things. Mr. Healy asked if there was anyone other than Rep. Russell who is a part of the entity. Ms. Knox stated there is a treasurer. Mr. Healy asked who approved the payments to Rep. Russell. Ms. Knox answered that would have been Rep. Russell and the treasurer. Mr. Healy asked who authorized the treasurer to disburse the funds. Ms. Knox stated the PAC is a leadership PAC that is run by Rep. Russell. Mr. Healy asked if the leadership PAC was an entity. Ms. Knox stated it is not a legal entity but agreed it could be considered an organization. She reminded the Commissioners the issue before them is who owns the email list and if it was an in-kind contribution to the campaign.

Mr. Lee asked how they can verify the information being provided about the email lists. Ms. Knox stated she could submit an affidavit about the upload history and she could provide a redacted printout of the upload history. Mr. Healy asked whether she had personally seen this information. Ms. Knox confirmed she had. The upload history shows the name of the list and the number of records uploaded. Mr. Lee stated he was not questioning her credibility but expressed concern about the lack of physical evidence for verification purposes. Mr. Wayne said staff could review the information Ms. Knox has referenced if that is what the Commissioners wanted but it would delay their decision process. Mr. Lee suggested that Ms. Knox could provide the data to the Commission staff for review only without creating a public record, thus preserving the confidentiality of the data. Mr. Lee said that he would be satisfied with the staff's review of the data as verification of the information provided by Ms. Knox.

Mr. Healy suggested that Ms. Knox and Rep. Russell could be sworn in and testify under oath about the information being provided. Ms. Lowry stated she understood the background of the lists but was interested in the value of the list so they could consider a penalty associated with the in-kind contribution Rep. Russell made to her campaign. Mr. Lee stated that for verification purposes, he would accept the information being provided if Ms. Knox and Rep. Russell provided testimony under oath. Ms. Knox said that she did not object to providing sworn testimony if that is what the Commission wanted. However, Ms. Knox stated she has appeared before the Commission many times and has never been required to provide sworn testimony in similar cases. Mr. Healy stated Ms. Knox has placed herself in the position of being an expert witness and there is no physical evidence for them to review to make a decision. Mr. Lee asked why people are not sworn in at

these meetings. Ms. Gardiner explained it has been a longstanding practice of the Commission to handle these matters informally, possibly due to the timing of campaigns and the need to resolve issues. She stated there are times when the Commission chooses to conduct a fact finding hearing with sworn testimony but usually those matters are scheduled for a later date. Mr. Lee withdrew his request to have Ms. Knox and Rep. Russell sworn in.

Rep. Diane Russell appeared before the Commission. Ms. Matheson asked when Rep. Russell gave the list to the campaign, what was on that list, and were enhancements made after it was given to the campaign. Rep. Russell stated she had been curating the personal list for years on her own. However, after giving it to the campaign, the campaign paid to have the list cleaned because it is very important to have relatively current data in order to maintain the relationship with Action Network. She stated she had started the list based on two petitions that went viral on MoveOn.org. Rep. Russell said, while she does not have access to the personal information of the petition signers on MoveOn.org, she does have the ability to send emails to them on issues that matter to her. The email directs people to take an action on another platform and that is how the list grows. She said Action Network charges \$10 a month for the personal list. She did not establish an account with Action Network for the PAC because it would have triggered higher fees.

Ms. Matheson asked when Rep. Russell gave her personal list to the campaign. Rep. Russell said that it was probably in November or December of 2015. Rep. Russell said the list was sent to a list cleaning company for maintenance. In addition, Rep. Russell said that she began to upload other personal lists that had not been uploaded to Action Network previously. Ms. Matheson asked if the campaign list is being maintained separately from the PAC list. Rep. Russell said it was and the PAC list has been downloaded to a flash drive in a .csv file. Ms. Matheson asked when the PAC last used its list. Ms. Knox stated it was probably around the time Rep. Russell terminated her contract with Nation Builder. Rep. Russell said the list was getting very stale and would have to be cleaned before she could start using it with another platform provider.

Mr. Nass stated it is phenomenal how Rep. Russell has grown these lists. He stated he is thankful Rep. Russell has agreed to report the donation of the list as an in-kind contribution to her campaign and would like to focus on addressing that issue.

Mr. Healy asked what “on-line organizing” is. Rep. Russell stated it is reaching out to people on the PAC’s email list about issues of importance to Rep. Russell. An ancillary benefit of that effort is that the email list grows. Mr. Healy asked what campaign the PAC was created to support. Ms. Knox stated it is a leadership PAC and not related to any specific campaign. Mr. Healy asked if Rep. Russell was the decision-maker and chief operating officer for the PAC. Rep. Russell stated she was. Mr. Healy asked who made the decisions about how the PAC spent its money. Rep. Russell said they were made in concert with the treasurer but she was primarily responsible.

Ms. Matheson stated she understood Rep. Russell had donated a copy of the list to her Senate campaign and had continued to add value to that list. Rep. Russell stated there are many ways to add value to a list. For example, Nation Builder would tag individuals with specific information based on the various petitions the individual supported. As a result, Rep. Russell had the ability to micro target followers based on the tags associated with them. She stated Action Network is a very basic service and does not have that capacity. Rep. Russell said another way to quantify value is whether the data is current. Ms. Matheson asked if Rep. Russell had spent any time cleaning the list and removing names herself. Rep. Russell said she would not because it is too time consuming.

Mr. Lee stated he is satisfied the list in contention is not a list owned by the PAC. The remaining questions are: what is the value of the in-kind contribution of this list to her Senate campaign and what they should do next. Mr. Healy agreed and asked how much of the fundraising done by Rep. Russell’s Senate campaign was a result of the use of this list. Rep. Russell stated that between 90-95% of the contributions she received were as a result of the email list. Mr. Healy asked how she came up with the sale price of the PAC list for the sale to Democrats.com. Rep. Russell said the sale was an informal agreement that happened during a video conference. She did not have a receipt or email detailing the agreement to sell the list. Rep. Russell stated the value of the list fluctuates with current events; she was astonished with her campaign’s fundraising success. Ms. Knox said the enhanced PAC list is very different from the campaign list and cannot be valued in the same way. Ms. Knox said they proposed to give the personal list donated to the campaign a value of \$1,500 because the list was not exclusive to the campaign, the campaign had to pay to clean it, and the list is an activist list, not a donor list. She said there was no way the campaign could know the people on the campaign list would actually donate to the campaign.

Mr. Nass said he agreed with the value of \$1,500. Mr. Lee asked what staff thought of the suggested valuation. Mr. Wayne stated he had no basis for disagreeing with the valuation. Mr. Healy asked if Rep. Russell would accept a \$1,500 offer for her list. Rep. Russell said that after this experience, she would not sell it. Mr. Lee asked why, since the list has value, Rep. Russell did not report the list as an in-kind contribution to her campaign. Rep. Russell said she did not believe the list had any value.

Mr. Nass asked what the penalty would be if they accepted the \$1,500 valuation. Ms. Matheson asked how they could assess a penalty without the report being amended. Ms. Gardiner stated they could accept the amendment proposed by Ms. Knox – that the list was an in-kind contribution with a value of \$1,500 to Rep. Russell’s campaign. They could make a factual and legal determination whether an omission of an in-kind contribution of \$1,500 in this set of facts and circumstances made the originally filed report substantially non-conforming, such that it was a late report. Mr. Healy asked why Rep. Russell had not already amended the report. Ms. Knox stated she generally advises clients to wait until they receive clear direction from the Commission on how to amend a report, especially if there is a pending matter.

Mr. Healy made a motion that the contribution of her personally owned email list to her campaign was an in-kind contribution of \$1,500 and that the email list was not owned by the Working Families PAC. Mr. Healy withdrew his motion.

Ms. Lowry made a motion to determine that there was an in-kind contribution from the candidate to her campaign of her personal email list in November or December 2015, valued at \$1,500 which should have been reflected in the report, and that the report is substantially non-conforming, and to impose a penalty of \$500. Mr. Nass seconded the motion. Ms. Lowry asked what the statutory penalty would be under these circumstances. Mr. Wayne stated the maximum penalty allowed under the statute would be \$1,000 for this kind of semiannual pre-election report.

Ms. Knox requested the Commission consider the chart the staff had included in its memo. She pointed out that the fines tended to be low, that this type of violation is not as serious as some of the ones listed in that chart, all of which should be taken into consideration when assessing a penalty. Mr. Lee asked if the use of personal equipment and time should be considered an in-kind

contribution. Mr. Wayne stated there is an exception for the use of computers, telephones and other office equipment. He said the monthly fee she paid to Action Network would not come under this exception.

Mr. Healy stated they have accepted the value of \$1,500 to avoid a long procedure, even though the value could actually be higher, and he intended to vote for the motion. Ms. Matheson said that she concurred with Mr. Healy's view of the matter. Mr. Lee stated he supported the proposed penalty. Ms. Matheson expressed concern about assigning a value to the list and asked if the list donated to the PAC should have been listed as an in-kind contribution. Ms. Gardiner stated the Commissioners are accepting the candidate's valuation of \$1,500 for the list as sufficient for purposes of reporting this in-kind contribution. She said the Commission is not making an independent evaluation. The campaign made its best effort at valuation and presented a value that the Commission could justifiably accept and if the report is amended to reflect the in-kind contribution, the Commission could consider it a conforming report.

Motion passed (5-0).

### **3. Request to Investigate Working Families PAC**

Mr. Wayne stated this is also a request for investigation filed by Michael Hiltz regarding Working Families PAC which is Rep. Russell's leadership PAC. Mr. Hiltz characterized the PAC as an "unregulated money mill" for Rep. Russell due to the various payments it made to her. Mr. Hiltz questioned whether the PAC should be registered at all, whether the statement of support is accurate, and whether a particular cash receipt was reported correctly. Mr. Wayne stated staff did not believe Mr. Hiltz had shown sufficient grounds that a violation may have occurred.

Mr. Nass made a motion to adopt the staff's findings. Ms. Lowry seconded the motion.

Mr. Healy said that he did not understand why this PAC is registered in the first place because it did not meet any of the statutory definitions of a PAC. He asked why these so-called leadership PACs even qualified as political action committees. Mr. Wayne stated leadership PACs are a longstanding practice that predates his tenure as Executive Director. He stated at some point someone had advised legislative leaders that a registered PAC could serve as a vehicle for public



disclosure of the legislator's financial activities. Mr. Healy stated if they were not registered as a PAC and the legislator did fundraising, the money would go into that legislator's pocket.

Mr. Nass stated this procedure of registering a leadership PAC enables a legislator to solicit donations. Potential donors would probably not make a donation if there were no PAC. Mr. Healy agreed and said that potential donors would be afraid that their donation could be considered a bribe. Ms. Matheson stated these PACs do not have to spend money every year in order to meet the financial threshold. However, if they spent the money and were not registered, they could be penalized. She stated supporting a candidate or ballot question does not have to be its major purpose.

Mr. Lee stated having these pseudo-entities report their financial activity is better than no reporting at all. The fact that the entity registered even though it was not required is not a violation. Mr. Healy asked whether a PAC registration should be accepted if the planned activities do not meet the definition in the statute. Mr. Lee asked whether the Commission had the power to refuse to accept a PAC registration or to revoke a PAC's registration. Mr. Wayne said the Commission could change its policy and have staff do further review into the planned activities of the PAC to see if the entity meets the PAC definition before accepting a registration.

Mr. Healy stated the reason this important is that, if the PAC's mission is clear, the money it raises has to be spent for that purpose. If the mission is not clear and the entity can raise money for anything, the PAC has no boundaries to define what legal expenditures are and the money can go right into the legislator's pocket. Mr. Nass said there is a penalty in these situations. Candidates can lose elections as a result of negative press coverage and public scrutiny. Senator Tuttle and Rep. Russell may have lost their elections as a result of this kind of public scrutiny.

Ms. Matheson stated she does not see a violation in this matter and intended to support the motion. She expressed concern about the issue of leadership PACs and believes the Commission should try to address it in a meaningful way the next time the Commission recommends statutory changes to the Legislature. Mr. Nass said he is also troubled with leadership PACs but he believes that if they are to exist, there must be a process for them to report their financial activity. He stated that as

concerning as this situation is, at least the reporting done by a registered PAC provides some transparency into the legislator's activity.

Mr. Healy stated his concern is not about what is done with the money but with allowing an entity to register as a PAC when they are not, by definition, a PAC. He said he is not interested in finding a violation or penalizing the Working Families PAC. Nonetheless, he believes there is a reasonable argument to be made that the Working Families PAC is not a political action committee as intended by the statute. Therefore, the registration should never have been accepted.

Ms. Knox clarified for the record the PAC did meet the financial threshold for registration because it did spend \$1,500 on candidate elections. Mr. Healy agreed the PAC spent \$1,500 on a candidate but pointed out it spent \$41,833 on other things. Ms. Knox stated it had to register because it did spend \$1,500. Mr. Healy said that, as far as the registration requirement goes, the \$1,500 threshold is only one part of the PAC definition. The other important part is that the organization's major purpose is to influence elections. Ms. Matheson clarified that a PAC does not have to meet all the definitions and does not have to have a major purpose.

The motion passed (5-0).

Mr. Lee stated that statutorily they do not have the authority to revoke a PAC registration but asked if they could refuse to accept a registration. Ms. Gardiner stated there is no procedure in the statute for refusing a PAC registration. She said this is an issue they may want to give more consideration. Ms. Lowry requested this issue be placed on a future agenda. Ms. Matheson agreed but suggested that the issue be taken up again after the election. Mr. Wayne stated it would be better to start work on this in the fall if they want to propose legislative changes for the next Legislature.

#### **4. Potential Seed Money Violation - Hon. Joanne Twomey**

Mr. Wayne stated Ms. Twomey was a Maine Clean Election Act (MCEA) candidate in the June 14<sup>th</sup> Democratic primary election for the Maine Senate, District 32. After being certified to receive MCEA funds, Ms. Twomey made a payment of \$2,500 to Perry Aberle. When she filed her 11-Day Pre-Primary report, it became apparent that she had used MCEA funds to pay for services she received prior to certification. He stated it is a violation to use MCEA funds to pay for services

received prior to certification and Ms. Twomey should have raised and used seed money to pay for those services.

Joanne Twomey appeared before the Commission. She said that when Senator David Dutremble announced that he would not seek re-election, she decided to run for the open Senate seat in District 32. Shortly after he made that announcement, Senator Dutremble resigned from the Senate, which created a vacancy and caused a special election to be scheduled. She decided to seek the Democratic nomination for the special election. This was all happening at the time that she was trying to collect qualifying contributions to be eligible for Maine Clean Election Act funds for the 2016 regular election. Ultimately, she did not get the Democratic nomination for the special election. She said that she had run as an MCEA candidate before but she had never raised any seed money and she was unfamiliar with the rules regarding seed money. Ms. Twomey said she knew she needed help with her campaign and that is why, when Perry Aberle offered to be her campaign manager, she agreed.

Perry Aberle appeared before the Commission. Mr. Aberle stated he has worked on other campaigns, both traditionally and MCEA financed. He said other candidates have used MCEA funds to pay him for the work he did prior to their certification. He thought that was a permissible use of MCEA funds. He said that he was not hired to collect qualifying contributions for Ms. Twomey but he did assist in that effort. However, he also provided many other services to Ms. Twomey such as designing banners and postcards and making preparations for two caucuses. Mr. Healy stated he accepts that Ms. Twomey did not knowingly break the law but that is not an acceptable defense.

Mr. Nass pointed out that on page 7 of the Candidate Guidebook, it clearly states an MCEA candidate must use seed money to pay for all expenditures made prior to certification. If a candidate does not raise seed money, the candidate should not make expenditures prior to certification. Mr. Aberle said it was not easy to raise seed money.

Mr. Healy asked why Mr. Aberle maintained a work log of his activities if he was going to be paid a set fee for his work on the campaign. Mr. Aberle stated he was advised he needed to maintain this log by Commission staff.

Mr. Lee asked if they had read the Candidate Guidebook. Ms. Twomey stated she did not read the Guidebook. Mr. Aberle stated he read the Candidate Quick Guide. Mr. Lee asked if Ms. Twomey had qualified for MCEA funds in the past. Ms. Twomey said she had, but she had never raised seed money. Mr. Healy asked if she had ever paid someone else to collect qualifying contributions for her. She said she had not, but she knew she was going to need help this time and she hired Mr. Aberle because of his experience.

Mr. Aberle stated he did not include all of the services he provided on the report, which if he amended the report, it could alter the amount in question. Ms. Twomey stated she did have MCEA funds left in her account and would be returning \$1,500.

Ms. Matheson asked how much Mr. Aberle had been paid and what was the amount they had agreed on. Ms. Twomey responded she had paid him \$2,500 and they had agreed that the amount would be no more than \$2,700 for his services.

Mr. Lee asked if the only relevant mitigating circumstance for this type of violation is if circumstances were out of the candidate's control. Ms. Gardiner stated she did not believe that provision in the statute precluded the Commission from considering other factors.

Mr. Healy asked why the payment was only \$2,500 when they agreed to \$2,700. Mr. Aberle said that the extra \$200 was there to pay for additional work, if necessary. Mr. Aberle stated he did a lot of work for the campaign for which he did not bill or get paid and he charged a lower fee for his services than he normally charges. Mr. Healy asked if he was paid for each qualifying contribution he collected. Mr. Aberle said he was not. Mr. Aberle stated he was paid mainly for graphic design work and organizing volunteers and that work was done after certification. Mr. Lee asked how much of the \$10,000 was spent. Mr. Aberle stated the campaign spent \$8,499.99 of which he received \$2,500 and there is \$1,500 to be returned.

Mr. Lee asked why Ms. Twomey did not respond to the email or letter sent by Commission staff. Ms. Twomey said she had just started a part time job, was having computer problems, and never saw the first letter or email. She said she was unaware of any of this until she received a telephone call from Mr. Wayne and the second letter. Mr. Wayne confirmed that both letters were mailed to the same address.

Mr. Healy asked when Mr. Aberle prepared his work log. Mr. Aberle said he prepared it on June 25<sup>th</sup> using the daily record of his campaign activity he kept in a notebook. Ms. Gardiner referred the Commissioners to § 1125 (12)(A) which requires a candidate to keep contemporaneous records of services provided by a vendor in excess of \$500 for the election cycle.

Ms. Lowry made a motion that, in light of testimony that a lump sum payment was provided for all services, that services were provided to the candidate beyond those that were billed or recorded contemporaneously, that the time-keeping records did not serve as an invoice, and that this was an unintentional error, the Commission assess a penalty of \$150 without requiring repayment of amounts that were mistakenly invoiced. Mr. Nass seconded the motion.

Ms. Matheson stated the motion presumes there is a violation. Ms. Lowry agreed there was a violation. Mr. Healy stated he believes that the motion, as stated, seems to imply there is no violation. He stated he could conclude there was no violation based on the fact that Mr. Aberle had an agreement to be paid \$2,700 but only received \$2,500 for his services and it would be difficult to allocate the amount paid for specific purposes. He stated there would be no reimbursement because if they find a violation, then they would have to require the money be reimbursed. Ms. Lowry withdrew her motion.

Mr. Lee asked why Mr. Healy did not believe there was a violation. Mr. Healy responded that one could just as easily conclude that there was a violation based on the evidence. Mr. Aberle was paid for doing the whole job and provided even more services than the contract originally contemplated; he just started providing services early.

Mr. Lee stated no one is disputing that Mr. Aberle provided some services prior to certification and MCEA funds were used to compensate him. Mr. Healy asked what the total amount for the services provided prior to certification came to. Mr. Lee said it was \$1,585. Mr. Healy stated their job is to make sure MCEA funds are used legally. He stated a mistake was made but Ms. Twomey will be returning unspent MCEA funds. Mr. Healy stated if they conclude she violated the statute by spending \$1,585 for services received prior to certification, that amount becomes illegally spent money and would have to be reimbursed. Ms. Matheson and Mr. Lee stated they believed that

requiring reimbursement would be discretionary. Ms. Lowry pointed out Ms. Twomey still has to file her final report and it is her understanding there may be outstanding payments to be reported.

In response to a question from Mr. Healy, Ms. Gardiner stated the statute (§ 1127) does not specifically direct the Commission to require the return of MCEA funds. She stated the money was spent for campaign purposes but it was spent, in part, for purposes that should have been paid for with seed money. Mr. Healy asked if they could find a violation and not require reimbursement. Ms. Gardiner stated she believed they could.

Mr. Healy made a motion to find that the Maine Clean Election Act was violated when Ms. Twomey paid \$1,585 for services rendered prior to the candidate being certified and, because of the circumstances presented at the meeting – that Mr. Aberle was paid only \$2,500 on a \$2,700 contract and that the records presented today were not really billing records but a home diary required to be kept under the Maine Clean Election Act – to not require the reimbursement of the funds, and to assess a penalty of \$150. Ms. Lowry seconded the motion.

Ms. Matheson stated she believed that, based on the record, the amount of MCEA funds spent on services rendered prior to certification could be reduced to \$1,070. Ms. Matheson said that she can support the motion but thought that it was important for the record to reflect that the amount improperly spent could be lower than \$1,585. She said there was a misunderstanding of the rules regarding the use of MCEA funds for services rendered prior to certification. Even though the violation was unintentional, it was a clear violation.

Ms. Lowry stated she did not need to quantify the MCEA amounts spent because the value of the services provided were considerably higher than the agreed-upon amount and there are still outstanding payments that have not been reported. Mr. Healy asked if Ms. Lowry could conclude that the \$2,500 compensated Mr. Aberle for the services rendered after certification and was not necessarily used to pay for pre-certification services. Ms. Lowry said it had been suggested that the \$2,500 was a prepayment for services.

Mr. Healy asked if his motion complied with the law. Ms. Gardiner stated she believed the Commission has the discretion to find a violation in this matter without requiring the reimbursement of MCEA funds.

Mr. Lee stated they first needed to determine if there was a violation. Then, if there was a violation, they need to decide whether the funds should be reimbursed. If they decide not to require reimbursement, there is no need to determine the amount of the improper payment. Then the Commission had to determine the amount of the penalty. He said he does not believe this was an intentional violation but the statute does not require intent for a finding of violation. In determining whether a violation occurred, it is simply a matter to determine whether MCEA funds were used to pay for goods and services received prior to certification. The statute and the guidance given to candidates are very clear on the issue. The facts get somewhat murky when there is a lump sum payment and services are rendered before and after certification as is the case in this matter. Mr. Lee said the candidate has an obligation to segregate pre- and post-certification expenditures in order to guarantee that MCEA funds are not used to pay for pre-certification goods and services. Mr. Lee was concerned that they could be sending an inadequate message by only assessing \$150 penalty and not requiring the reimbursement of funds.

Ms. Twomey asked them to consider that she does not have a lot of money, that this was an honest mistake, and that Mr. Aberle's log was not a bill.

Mr. Lee said this is the taxpayers' money that is being misspent, but they are not requiring it be repaid and he believes the penalty should be higher. Mr. Lee asked what the penalty range has been for this type of violation. Mr. Wayne stated there has only been one other case. Mr. Lee stated he would be comfortable with a \$250 penalty. Ms. Lowry and Ms. Matheson said they were comfortable with a \$150 penalty.

Motion passed (4-1, Mr. Lee opposed).

##### **5. Request for Waiver of Late-Filing Penalty - Hon. Joanne Twomey**

Mr. Wayne stated this matter involves a late-filed report for Joanne Twomey's campaign. The report was due on Friday, June 3<sup>rd</sup>. Mr. Aberle is registered as an authorized agent for the

campaign. In a voicemail left with Candidate Registrar, Emma Burke, he said he was experiencing difficulty filing the report. Commission staff filed the report on behalf of the campaign on Saturday, June 4<sup>th</sup>. The staff thinks the problem may have been that Mr. Aberle was using the candidate's credentials to log into the e-filing system. Mr. Wayne said the law prohibits MCEA candidates from filing their own campaign finance reports. Mr. Wayne said that once a candidate is certified, the function to file reports is disabled in the e-filing system for the candidate.

Mr. Aberle stated that he had used Ms. Twomey's user name and password to file other reports. He also said that the user name he was given was incorrect. The user name did not start with his first initial "P;" it started with "T."

Mr. Wayne said that the records in the e-filing system show that Ms. Burke filed the seed money report, not Mr. Aberle, and that Mr. Aberle had logged into the e-filing system using his own user name and password.

Mr. Healy asked if staff is still recommending a \$150 penalty. Mr. Wayne stated they are but the Commissioners may want to consider a lower penalty given the prior case.

Mr. Healy made a motion to adopt the staff recommendation. Mr. Nass seconded the motion.

Mr. Lee asked how this minor violation deserves a \$150 penalty, whereas the prior case also resulted in a \$150 penalty but it involved a more serious violation of the Maine Clean Election Act.

Mr. Wayne said Ms. Twomey was in a contested primary election. The report was due and the public deserves to be able to see how money is being spent. In this case, that information was not available until the next day.

Ms. Lowry stated she thought the penalty was high.

Motion passed (4-1; Ms. Lowry opposed).



## **6. Request for Waiver of Late-Filing Penalty – Lincoln County Democratic Committee**

Mr. Wayne stated PACs, BQCs and party committees are required to file a campaign finance report for any expenditure over \$1,000 made within the last 13 days of an election. The Lincoln County Democratic Committee (the Committee) made a payment of \$1,610 for rental of a hall and food for their annual fundraising dinner on June 4, 2016. These arrangements were made in April but the payment was not made until June. The expenditure was not in support of, or in opposition to, any candidate or ballot question nor was it related to the primary election, so the Committee was not aware of the 24-hour reporting requirement.

Sandra O’Farrell, treasurer for the Committee, appeared before the Commission. Ms. O’Farrell stated she has been the treasurer for a long time and did not realize, until she was entering the expenditures for the July report that she had missed filing a 24-Hour report and she immediately filed the report. She said the Committee holds this event every two years, they paid a down payment in April and the remainder was paid when the event was held.

Ms. Matheson asked if Ms. O’Farrell was aware of the staff recommendation and if she was comfortable with the staff proposal. Ms. O’Farrell stated she would prefer a full waiver but she is comfortable with the reduced penalty.

Mr. Nass made a motion to accept the staff recommendation. Mr. Lee seconded the motion.

Ms. O’Farrell stated she has never encountered this situation before and asked if the Committee is required to file this report for any expenditure over \$1,000 even if the expenditure is not related to a candidate. Mr. Wayne stated §1017-A (4-B)(C) requires a committee to report any contribution of \$5,000 or more or any expenditure of \$1,000 or more made after the 14<sup>th</sup> day before any election. Motion passed (5-0).

Mr. Nass made a motion, seconded by Mr. Lee, to adjourn. The motion passed. The meeting adjourned at 12:55 p.m.

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