



Minutes of the September 28, 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; Phyllis Gardiner, Counsel

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

The Commission considered the following items:

1. Ratification of Minutes of the August 10, 2017 and August 30, 2017 Meetings

Mr. Lee made a motion to adopt the August 10, 2017 minutes. Mr. Nass seconded the motion.
Motion passed (5-0).

Mr. Nass made a motion to adopt the August 30, 2017 minutes. Ms. Lowry seconded the
motion. Motion passed (5-0).

2. Request for Waiver of Late-Filing Penalty – Oxford County Democratic Committee

Mr. Wayne explained that the committee's 11-Day Pre-General Election Report was filed on
time. However, the report did not include five expenditures totaling \$8,534.00. Because the
report did not substantially conform to the reporting requirements, it is considered late and the
preliminary penalty is \$500. In the committee's waiver request, the treasurer explained that, just
prior to the filing deadline, he had a bad accident which contributed to the reporting issues. The
staff recommended a reduction of the preliminary penalty to \$100.

Mr. Don Berry, the chair and former treasurer of the Oxford County Democratic Committee,
appeared before the Commission. He explained that the accident was serious but that he did get
up to file the report. However, he acknowledged that he did miss entering some expenditures.
He entered the transactions sometime after filing the report and thought he had properly filed an
amended report at the same time he filed the January Semiannual Report.

Ms. Matheson said that she agreed with the staff's analysis that Mr. Berry's situation was a valid medical emergency and warranted a reduction of the preliminary penalty but not a complete waiver.

Mr. Nass moved that the Commission adopt the staff recommendation and reduce the penalty to \$100. Mr. Pattershall seconded.

Motion passed (5-0).

3. Request for Waiver of Late-Filing Penalty – Brunswick Town Democratic Committee

Mr. Wayne stated that the Brunswick Town Democratic Committee filed a 2017 July Semiannual Report thirteen days late. The committee's treasurer was new and misunderstood the filing requirements. Because the treasurer was new and the committee had not provided her contact information to the Commission staff, she did not get the filing reminder notice. Mr. Wayne said the transactions reported late were related to charitable causes, not to any political campaign. The staff recommended a penalty reduction to \$100.

Mr. Lee moved that the Commission reduce the statutorily calculated penalty to \$100 because of the presence of mitigating circumstances as stated in the statute. Ms. Lowry seconded.

Motion passed (5-0).

4. Discussion of Leadership PACs/Spending Restrictions

Mr. Wayne explained that this agenda started with a request from Mr. Lee for the staff to research the possibility of initiating an audit program for leadership PACs. In addition to the recent matter regarding Senator André Cushing's leadership PAC, there have been other instances where Legislators used their PAC funds in ways that appeared to be self-enriching. He said the staff memo points out the lack of legal restrictions on how PAC funds may be used and how the staff currently conducts compliance reviews of PAC reports.

Mr. Lee said the matter of Senator Cushing's leadership PAC only came to light because of a complaint against Senator Cushing filed by a family member with this Commission and litigation involving a family business. He said that most people would expect that the money given to an elected official with a leadership PAC will be used for political or official purposes, and not for personal reasons. Since the Commission already has the statutory authority to conduct audits, he

suggested that the Commission consider the possibility of engaging in a process of random audits of leadership PACs, like the audit program for Maine Clean Election Act candidates.

Ms. Lowry agreed with Mr. Lee's suggestion to initiate a program to conduct some random audits of leadership PACs. She said the results could be important in informing the Commission's decision making in the future. Mr. Nass also agreed with Mr. Lee's suggestion to conduct random audits of leadership PACs. However, he cautioned the Commissioners of the potential for a negative reception from Legislators.

Mr. Pattershall said the statute authorizes the Commission to investigate in order to determine whether there is a violation of campaign finance law. Since there are no restrictions on how PACs may spend their money, he questioned whether the Commission has the authority to investigate. Senator Cushing's penalty was based on reporting and accounting violations, not on the fact that he lent money to a family business. He wondered what the objective of an audit would be if, at the conclusion, there could be no violation found regardless of what the PAC funds were spent on.

Mr. Lee said that Mr. Pattershall's concern was valid. He said that the purpose of the audit would be to determine whether a PAC's report accurately stated the PAC's expenditures, not whether the funds were spent properly. In Senator Cushing's case, there were expenditures that were not reported. The audit would not be a vehicle to criticize or pass judgment on how the funds were spent.

Ms. Lowry said that she would not be disturbed if some Legislators reacted negatively to a random audit program. The Commission would be acting within its authority and performing a function consistent with the Commission's purpose.

The Commissioners discussed how the selection process for the random audit would work. Mr. Wayne said that, in general, it will be very clear whether a PAC is a leadership PAC and the staff would be able to identify them.

Mr. Wayne brought up two issues for the Commissioners to consider: the potential for a significant time commitment on the part of a Legislator to respond to the audit and the negative reaction and fear that could result simply by being selected for a random audit.

Ms. Gardiner suggested that one option the Commission could consider is to announce in advance that the Commission will be conducting random audits in 2018. PACs would then know well in advance that they could be audited, as Maine Clean Election Act candidates know in advance that 20% of them will be audited after the election. Mr. Nass agreed with Ms. Gardiner's suggestion to provide notice of the audit program.

Mr. Pattershall said that the audit program should be extended to all PACs, not just leadership PACs. Ms. Matheson said the goal of the audit program should be to ensure that PAC reporting is transparent – that all expenditures and contributions are reported and that nothing is hidden. That is the transparency that the Commission is supposed to be fostering.

Ms. Matheson encouraged Mr. Wayne to have informal discussions with legislative leadership to sound out their concerns about a random audit program for PACs.

Regarding the scope of the audit, Mr. Lee said that he thought that a review of bank statements and other records, rather than a full independent audit, would be sufficient.

Mr. Lee suggested that the staff could notify interested parties that the Commission is considering conducting reviews of a random sampling of PACs in the next election cycle to ensure that the PACs are in compliance with campaign finance reporting requirements and that the staff get feedback about the audit program from legislative leadership and others.

Mr. Pattershall said that the notice ought to be clear that this program would be more than the usual compliance reviews and would involve a deeper review of a PAC's reports.

Mr. Wayne said that he would report back to the Commission at the November meeting regarding the feedback he receives from legislative leadership and others interested parties.

Other Business

Mr. Wayne told the Commission that Governor Paul R. LePage contacted him regarding anonymous robocalls concerning Senator Susan Collins and an upcoming vote on a federal health care bill. The call did not appear to be in compliance with the rules of the Federal Communications Commission which require sponsor identification on robocalls. Mr. Wayne said that the issue was not within the Commission's jurisdiction, but under the Commission's rules, the staff is authorized to refer complaints to other agencies that may have jurisdiction. Mr. Wayne said that he would refer the Governor's concern to the FCC.

Executive Session

Ms. Matheson moved that the Commission enter into executive session pursuant to Title 1, section 405(6)(E) and Chapter 1, section 5(2) of the Commission rules to consult with Commission's counsel concerning the legal rights and duties of the Commission. Mr. Lee seconded.

Motion passed (5-0).

Ms. Matheson moved that the Commission come out of executive session. Mr. Nass seconded.

Motion passed (5-0).

Mr. Lee moved that the Commission authorize the Chair to establish subsequent hearing dates for the casino investigation and to issue a notice of hearing. Mr. Nass seconded.

Motion passed (5-0).

Mr. Lee made a motion, seconded by Mr. Nass, to adjourn. The motion passed. The meeting adjourned at 11:47 a.m.

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