



Minutes of the December 20, 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 9:03 a.m.

The Commissioners took agenda items #3 and #5 out of order.

3. Audits of 2016 Maine Clean Election Act Candidates

Jennifer Connors and Casey Leonard of Runyon Kersteen Ouellette appeared before the Commission to provide an update on the audits of Maine Clean Election Act candidates in the 2016 election. Ms. Connors said, of the 48 campaigns selected for an audit, 47 audits have been completed. She said three of the reports being presented at this meeting had no findings or exceptions, two reports had minor exceptions and no findings, and one report had exceptions and one finding which was the subject of an agenda item for this meeting. The finding for that candidate involved the commingling of personal and campaign funds, but there was no evidence of the misuse of funds.

Mr. Lee asked Mr. Wayne for the staff's response to the recommendations in the draft summary report prepared by the auditors. Mr. Wayne said that the staff had already improved its written guidance to candidates with respect to recommendations #1, #2, #, #3, and #5. With respect to recommendation #4, the staff guidance is that candidates should always pay for campaign goods and services by using a check or debit card for the campaign bank account, rather than using personal funds which are then reimbursed out of the campaign account. Implementation of the recommendation would likely require a statutory or rule change which would have to be approved by the Legislature. He said he was doubtful whether this change would pass in the Legislature because candidates appreciate the flexibility of being able to use a personal credit card or check in situations when a campaign check or debit card is not available. Mr. Wayne said he recognized that it made more work for the auditors and Commission staff. However, he

thought those concerns were outweighed by the benefit to candidates to have the flexibility of using a personal check or credit card for some campaign purchases.

In response to a comment from Ms. Matheson, Mr. Wayne said that the required supporting documentation for purchases made with personal funds included the bank or credit card statement of the person who made the purchase as well as proof that the person was reimbursed by the campaign.

Mr. Lee asked Ms. Connors whether the rationale for recommendation #4 was to simplify the auditing process. Ms. Connors said it would make the paper trail much simpler, especially when there are purchases made by volunteers and treasurers. Mr. Leonard said they had some difficulty obtaining the personal bank or credit card statements from individuals who did not understand such documentation would be required.

Mr. Lee said, if the Commission were to consider making this change, he would want to take more time to consider the impact of requiring all campaign expenses to be paid for with a campaign account check or credit card, and banning the use of personal checks and credit cards. Under some circumstances, it may be more convenient or even necessary to use a personal check or credit card. He did not want to create a rule that candidates could trip over and then find themselves with a violation.

5. Compliance Reviews of Leadership PACs

Ms. Matheson asked Ms. Connors and Mr. Leonard if they had any thoughts on how to do a random selection of leadership PACs, if the Commission were to go forward with a program to audit those PACs. Mr. Leonard said that it would be important to convey the methodology that would be used in making the random selection and the objective of the program.

Mr. Nass asked Mr. Wayne about the definition of a leadership PAC. He asked specifically whether a PAC established by two sitting Legislators would be considered a leadership PAC.

Mr. Wayne said that PAC would be excluded from the audit program. He said the PACs with the highest risk are those with only one person involved.

Ms. Matheson said the purpose of the audit program was to make sure that PACs were accurately reporting their contributions and expenditures in their campaign finance reports and the audit would be a review of some of the supporting documentation for those transactions.

Ms. Lowry said she feels the discussion on this subject is complete. They have suggested some criteria in advance and expressed some of their concerns. There has been a good discussion about how to make a random selection of PACs to be audited and there will be a determination at a later date about ensuring the objectivity of the audit program.

The Commission resumed the meeting order on the agenda.

1. Ratification of Minutes of the November 30, 2017 Meeting

Ms. Lowry moved to adopt the minutes as written. Mr. Pattershall seconded. Mr. Lee made a friendly amendment to the motion to change the word “critiqued” to “criticized” on page 6 of the minutes. Motion as amended passed (5-0).

2. Draft Determination – York County Casino Initiative

Mr. Wayne noted that the staff had circulated an initial draft of the determination to the Commissioners and the respondents. Bruce Merrill, Esq., on behalf of Lisa Scott and her ballot question committees, and Avery Day, Esq., on behalf of Cheryl Timberlake, submitted comments regarding how specific topics were addressed in the determination. After considering their comments, the staff had prepared and circulated some proposed revisions, which were now before the Commission.

Ms. Lowry said that she would like to address the concern raised by Bruce Merrill in a letter to the Commission that, because she had considered abstaining from voting on a particular motion, she might have some relationship with Cheryl Timberlake that could rise to the level of a conflict of interest. Ms. Lowry said that she knew Cheryl Timberlake and Capitol Insights only through Ms. Timberlake’s appearances before the Commission. Ms. Lowry said that her husband also does not know Cheryl Timberlake.

Ms. Matheson suggested that they go section by section through the revised draft determination and discuss any changes the Commissioners would like to make and to consider the changes the staff made to the original draft determination.

Mr. Lee said that he found the original draft determination to be of excellent quality and had no suggestions to change the original version until the recommended changes on page 8.

Ms. Matheson said she thought the determination was comprehensive yet concise and captured what went on with the campaign and investigation in a clear and easily understandable fashion.

Mr. Nass recommended making a few minor changes that were not suggested by the respondents or staff. The first was to insert the word “legislative” to modify “committee” in the second line of the first full paragraph on page 3 of the revised draft for clarification. He also suggested that the phrase “large productions of documents” at the bottom of that page be amended to read “thousands of documents.” And on page 11, in the first sentence of the Findings of Fact, he suggested noting that the Commission heard “a full day” (rather than “several hours”) of testimony.

Regarding the change on page 8 suggested by the respondents, Mr. Wayne said that it was a helpful clarification but did not change the results of the Commission’s findings. The Commissioners agreed to make that change as well as a minor change to footnote 11 on page 8, which was suggested by the staff and Commission counsel.

After discussing the motion made by Mr. Pattershall at the November 3rd meeting regarding Lisa Scott’s use of the International Development Concepts LLC’s bank account, the Commissioners decided that footnote 15 on page 12 should be changed to read “The Commission finds that Lisa Scott used IDC for the purpose of conducting business when she was physically present in Hawaii.”

The suggested change on page 18 was intended to clarify the Commission’s finding regarding the funds transferred from Capital Seven LLC to Lisa Scott and to reflect the respondents’ comments regarding the characterization of the transactions between Lisa Scott and Capital Seven. The Commissioners agreed to make the suggested change on page 18 of the revised draft determination.

In his letter, Mr. Merrill suggested clarifications to the descriptions of the respondents’ arguments. He did not believe the original draft determination accurately reflected their arguments. The Commissioners agreed to the staff’s changes, which incorporated some changes suggested by Mr. Merrill on page 19 of the revised draft determination.

Mr. Merrill, in his letter, also disputed that the respondents had agreed that the term “financial activity” refers to both the amount and the source of a contribution. He stated that they had only assumed that interpretation *arguendo*. However, Mr. Lee pointed to a statement in the transcript of the November 3rd meeting by Alfred Frawley, Esq., representing Bridge Capital, in which he stated that the respondents did agree that the term “financial activity” includes the source of a

contribution. Mr. Lee said he was not inclined to make the change on page 21 that was suggested by Mr. Merrill.

Mr. Pattershall said the entire paragraph, regardless of whether the change is made, accurately reflects the respondents' legal argument. He said the paragraph can stand as originally written. Ms. Lowry agreed that the paragraph should be left as written. The suggested change on page 21 of the draft determination was not incorporated into the final determination.

The Commissioners discussed the respondents' suggested changes to the original draft determination regarding whether the respondents had made bona fide efforts to comply with campaign finance laws. The Commissioners directed the staff to change the last paragraph of the section entitled "Bona fide efforts to comply" on page 25 of the revised draft determination to read, "After consideration of the evidence, the Commission was not persuaded that respondents made a bona fide effort to file the required reports in conformance with the disclosure requirements of Maine's campaign finance laws."

In his written comments, Avery Day expressed concerns about the Commission's assessment of Ms. Timberlake's level of experience with campaign finance laws. He stated that the Commission took an expansive view of Ms. Timberlake's experience as a lobbyist in Augusta but did not acknowledge her total lack of experience with campaign finance reporting requirements. In response to Mr. Day's comments, the Commission directed the staff to remove the phrase "though to a lesser degree" on page 22 of the revised draft determination, at the end of the discussion of experience of the person filing reports.

Finally, Commissioner Pattershall suggested that footnote 22 be amended to clarify that he had concluded the maximum penalty "for each violation" -- not "for all violations" -- should be \$10,000. All Commissioners agreed.

Mr. Lee moved that the Commission adopt the written determination in the matter of the York County casino initiative campaign, as modified by the Commission at today's meeting. Mr. Nass seconded. The motion passed (5-0).

4. Rulemaking

Mr. Wayne said that there were no additional written comments other than those by the Maine Citizens for Clean Elections.

Mr. Nass moved that the Commission provisionally adopt the rules as proposed. Mr. Lee seconded. The motion passed (5-0).

6. Commingling Personal and Maine Clean Election Act Funds – Hon. James Davitt

Ms. Matheson said that she agreed with the reasoning in the staff's memo and appreciated the written response from Mr. Davitt.

Ms. Matheson moved that the Commission assess a \$100 penalty as recommended by the Commission staff. Ms. Lowry seconded. The motion passed (5-0).

Mr. Pattershall made a motion, seconded by Ms. Lowry, to adjourn. The motion passed (5-0).

The meeting adjourned at 11:32 a.m.

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