



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

Approved on: 1/17/2013

Minutes of the December 19, 2012, Meeting of the  
Commission on Governmental Ethics and Election Practices  
Held at the Commission Office, 45 Memorial Circle,  
Augusta, Maine

Present: Walter F. McKee, Esq., Chair; André G. Duchette, Esq.; Margaret E. Matheson, Esq.; Michael T. Healy, Esq.; Hon. Jane A. Amero  
Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel

At 9:10 a.m., Chair Walter McKee convened the meeting.

The Commission considered the following items:

**Agenda Item #1. Ratification of Minutes of the November 5, 2012 Special Meeting**

Ms. Matheson moved to accept the minutes as drafted. Mr. Duchette seconded.

Mr. Healy asked whether the Commission would be bound by its finding of fact in the Michael Nadeau matter at the hearing which has been rescheduled to January.

Mr. McKee explained the Commission made a probable cause determination only in order to initiate an investigation and that probable cause finding has no evidentiary value going forward in the investigation. He said the minutes are accurate and the November 5 determination simply gives the Commission legal authority to go forward with the investigation.

Motion to accept the minutes as drafted passed unanimously (5-0).

**Agenda Item #2. Hearing on Potential Campaign Finance Violations/House of Representatives, District 1** *(postponed to January 17, 2013)*

**Agenda Item #3. Acceptance of Over-the-Limit Loan by Rep. Alan M. Casavant**

Mr. Wayne explained that this issue came up during the staff's routine review of campaign finance reports. On September 14, 2012, Rep. Casavant's legislative campaign accepted a loan of \$1,000 from his 2011 mayoral campaign committee. Rep. Casavant is also the mayor of Biddeford. The legislative campaign repaid the loan on October 20, 2012. If a loan is not from the candidate, the candidate's spouse or domestic partner, or a financial institution, a loan from any other entity must be no more than the contribution limit for legislative candidates, which is \$350. Therefore, the receipt of the loan from his mayoral campaign is a violation of the \$350 contribution limit for legislative candidates. Rep. Casavant has responded that he did not view the loan as a contribution, the loan was repaid and publicly reported, any violation was unintentional, and that he relied on advice from others before receiving the loan.

Mr. McKee asked what the range was for the penalty amount and Mr. Wayne said between \$0 and \$650.

Mr. Healy asked how long the loan was outstanding and Mr. Wayne said approximately six weeks.

Rep. Alan M. Casavant explained that he had no intention of violating the law and believed that transferring funds from a campaign account with his name on it to another campaign account with his name on it was acceptable. He said he gained no advantage by doing this and was only trying to be pragmatic. He explained that the funds were left over from his mayoral campaign and he intended to reimburse the account after he had done some fundraising for his legislative campaign. He said the amount of the fine, in his view, implies that he did something unethical and he does not feel that he did. He said he was being very transparent in reporting the loan and was not trying to be deceitful. He simply needed money to pay for an order of palm cards. He said he was ignorant of the loan law but the law was not specific to his situation.

Mr. McKee stated there was no argument that there was a violation however the severity of the violation and the assessment of the penalty were the issues for discussion.

Mr. Duchette asked if the situation would be treated differently if the loan was given by a company in which the candidate was the sole owner. Mr. Wayne said that would be considered separate from the candidate. Mr. Wayne said there is no specific policy or rule for this situation.

Mr. Healy asked if the mayoral committee was a separate entity from the candidate. Mr. Wayne said he assumed it was not a separate legal entity.

Mr. McKee moved that the Commission find that there was a violation. Mr. Healy seconded.

Ms. Matheson said there was a violation of the rule and also the statute.

Mr. Duchette noted that the funds were in the candidate's mayoral account instead of the candidate's personal account and the statute does not get that specific to make a distinction between the two.

Mr. Healy asked whether it was acceptable for the candidate to take money out of his own pocket and loan it to the legislative committee. Mr. Wayne said that was acceptable because the candidate and spouse can loan an unlimited amount.

Mr. Healy said the real question then was, was the money he loaned his or was it another entity's money.

Mr. McKee asked Mr. Casavant if the account was set up as a committee account or individual account. Mr. Casavant explained that it was a political account in his name with a treasurer. He explained that originally he intended to disburse the remaining balance in the account to a food pantry; however, he got busy with other issues and it was placed on the back burner. He said people donated the money for political purposes and he believed that he could not use those funds for anything other than a political purpose.

Mr. Healy explained that if the funds belonged to the candidate, then the loan was legal but if the funds were someone else's money, then the loan was not legal and a violation occurred.

Mr. Casavant said that in his view it was his money to use for political purposes.

Mr. McKee said Mr. Casavant has the full authority to use the account as he wishes.

Mr. Wayne said the law requires that the funds in any campaign account be kept separate and cannot be commingled with any other funds. Rep. Casavant's mayoral account was subject to all campaign finance reporting laws. He explained further that after an election there are specific restrictions on how campaign funds can be disbursed, for example for certain political purposes or donations to a charity.

Mr. Healy stated that the mayoral account was not in the name of a registered political committee. He asked if there were a surplus in that account after the election, were there restrictions in the law as to what Rep. Casavant can do with that surplus. Mr. Wayne said there were restrictions.

Ms. Gardiner referred to section 1017(8) which listed those restrictions and explained that since Biddeford was a city over of 15,000 or more, this statute applies.

Mr. McKee moved that the Commission make a finding of violation. Mr. Healy seconded.

Motion passed unanimously (5-0).

Mr. McKee moved to assess a penalty of \$75. Mr. Duchette seconded.

Motion passed unanimously (5-0).

**Agenda Item #4. Use of Maine Clean Election Act Funds for Mailing by Rep. James Parker**

Former Rep. James Parker of Veazie reported making two payments of Maine Clean Election Act funds in June 2012 totaling roughly \$59 for stamps and envelopes. A constituent has requested that the Commission investigate whether Rep. Parker used the stamps and envelopes for a June 29 mailing related to the annual meeting of the Veazie Sewer District. Rep. Parker responded that the sewer district mailing was paid for with personal funds, not public campaign funds.

Mr. McKee moved to find that there is no basis for further investigation. Ms. Amero seconded.

Motion passed unanimously (5-0).

**Agenda Item #5. Request for Waiver of Late Filing Penalty by L PAC**

L PAC is a national political action committee formed in April 2012. In early September, the PAC solicited contributions on its Facebook page for the purpose of influencing the marriage initiative on Maine's November 6, 2012 election ballot. It registered and filed an initial report with the Commission on October 15, 2012. Based on the dates of its contributions, however, L PAC's registration, initial campaign finance report, and October 5 quarterly report were late. L PAC was also late in filing a report due on October 26, 2012. The PAC requests a waiver of the late-filing penalties because of a lack of familiarity with Maine campaign finance laws and because it made a bona fide effort to comply with statutory requirements.

Kate Knox, Esq., representing L PAC, said her client accepts the reduced amount of the penalty. She said this matter was quite complicated and took some time to get all the information organized. She said that L PAC does not dispute that the reports were filed late and believes that the staff's recommended penalty is fair.

Mr. Healy said he understood that the PAC had hired a Washington, D.C., attorney during the filing process and Ms. Knox confirmed this. Ms. Knox said there were conversations with the Commission's Assistant Director and someone at the law office regarding registration requirements and filing deadlines.

Mr. Healy asked if the amount of the reduced penalty was consistent with past cases of out-of-state political action committees that had penalties reduced. Mr. Wayne said it was. Mr. Healy said out-of-state PACs should be consulting with Maine attorneys regarding the filing requirements before engaging in political activity in Maine.

Ms. Matheson moved that the Commission find L PAC in violation for late-filing of its registration, as well as the initial, October quarterly, and 11-day pre-general election campaign finance reports. Mr. Duchette seconded.

Motion passed unanimously (5-0).

Ms. Matheson moved to adopt the staff recommendation for a reduced penalty and assess a penalty of \$889.50. Ms. Amero seconded.

Motion passed unanimously (5-0).

**Agenda Item #6. Consideration of Statute Changes Proposed by Commission Staff**

The Commission considered whether to include statute changes proposed by its staff in legislation which the Commission will submit for the 2013 session.

William P. Logan, Esq., spoke to the issue of accelerated reports for party committee and PAC expenditures over \$1,000 in the last two weeks before an election. He would support exempting staff time and payroll expenses from the 24-hour report. He said these are reported on other reports and does not add any value by including them in the 24-hour reports. However, it does create a large burden on treasurers for the PAC and party committees. He said if the purpose is to capture expenditures on newly hired staff in the last two weeks before an election, his experience is that it is unlikely that a campaign is hiring field staff during that time period before an election. There is very little public benefit in disclosing routine payroll payments on an accelerated basis.

In response to a question by Mr. Duchette, Mr. Wayne explained that the proposed change specifically states that payments of \$1,000 or more to staff would have to be reported in a 24-hour report.

Mr. Logan also noted that there may be some ambiguity with regard to who is required to file an independent expenditure report. In the past there have been issues when a treasurer files the report instead of the person who made the expenditure and spoke with the vendor. He said the person filing the report, usually the treasurer, is required to sign the affidavit but the person more practically suited to sign is the person who deals with the vendor. He said there needs to be clarification as to where the responsibility for filing the reports lies, which could eliminate the issue of a treasurer claiming he did not have all the information regarding the expenditure.

Mr. Duchette said the proposed changes to the treasurer's responsibility addressed that issue and would ultimately make the treasurer responsible so that he could not claim ignorance.

Mr. Wayne said the intention was to have a clearer delineation of the treasurer's duties for candidates and PACs without locking them into being the only person that could file the reports, but make the treasurer responsible for ensuring the reports are filed correctly.

Mr. Healy asked Mr. Logan whether in the case of a Clean Election campaign, the treasurer's responsibilities should include check writing authority to insure the public funds are expended for proper purposes. As it is right now, the treasurer has no responsibility for oversight of how the funds are spent.

Mr. Logan said that would be a very good safeguard and would create a check and balance process. He said practically speaking it may cause undue burden on some campaigns and the candidate usually has a better knowledge of the process.

Kate Knox, Esq., said the changes with regard to PAC treasurer/principal officer requirements and the 24-hour reporting are good. She said it was important to determine the level of knowledge and involvement of officers involved with a PAC because currently it was virtually impossible to ascertain the level of involvement of the people listed on the forms. She said the proposed changes create a structure that can be helpful in determining responsibility. She said she also supports the 24-hour report change which requires reporting of any single contribution of \$5,000 or more close to the election. She explained that having to review previous reports in order to determine whether the aggregate threshold had been reached was burdensome for smaller PACs so changing the requirement to a single contribution instead of aggregate was helpful. She agreed with Mr. Logan regarding accelerated reporting of staff time in 24-hour reports. She said PACs who hire new people during the last two weeks of a campaign should definitely be reporting that; however, it does not happen very often. She said having to report expenditures of regular staff is burdensome and suggested having an exempt category for reporting those ongoing field staff cases. She said there needs to be a way for full disclosure without being overly burdensome to treasurers.

Mr. Healy asked Ms. Knox for her thoughts on whether MCEA treasurers or deputy treasurers should have the sole check writing authority for the campaigns. Although she has not considered the issue comprehensively, Ms. Knox said her instinct is to think that it would be a good policy but, like Mr. Logan, she said she also was concerned about logistics and burdens on campaigns if that change were to take place.

She said given the responsibilities of the treasurers and the records they are required to keep, it seems logical that they would have check writing authority.

Regarding accelerated reporting for certain expenditures prior to the election, Mr. McKee stated that he would support exempting payroll expenditures for ongoing campaign staff from the reporting requirement. He said hiring staff within the last few days of the election would be cause for concern and should be reported accordingly.

Mr. McKee said that he approved of the proposed changes that would clarify the duties and responsibilities of PAC treasurers and principal officers. He thought that it was a good idea to require that PAC treasurers and principal officers sign a statement of responsibilities. It would put those individuals on notice that they were subject to certain legal obligations and liabilities.

Mr. Duchette asked why there was concern over a candidate filing their own reports. Mr. Wayne explained that if the candidate were the only person writing the checks and filing the reports, it could create an opportunity for the misuse of funds if there are no other people involved with the reporting. Although those cases of misuse of public funds are rare, it may still be a good policy to have some segregation of duties or a second set of eyes to review expenditures of public campaign funds.

Mr. McKee said this issue could cause some pushback from candidates running for office. Mr. Wayne agreed but if the Commissioners believed that this was a good policy, they should include it in the bill.

Mr. Wayne explained, in response to a question from Mr. Duchette, that traditionally financed candidates may name themselves as treasurer but Clean Election Act candidates cannot, they are required to have another person be treasurer.

Mr. McKee said having another set of eyes watching over how public funds are spent may be burdensome for some candidates but makes sense.



Mr. Wayne explained the statute change to the Maine Clean Election Act reinforces the requirement that the treasurer must file the campaign finance reports but it allows the candidate to input the information into the system.

Mr. McKee said this is the best way to keep an eye on public funds and even though it will impose some additional obligations on the candidates involved, it seems the responsible thing to do. He said the Legislature will make the final decision whether it passes or not.

Mr. Healy asked if the treasurer would be responsible for maintaining records. Mr. Wayne said the proposal allows for a more flexible approach which would mean either the candidate or the treasurer could keep the records. Mr. Healy said the Clean Election candidates should have a treasurer who is responsible for the records, writing the checks and making sure that expenditures are appropriate and insist on having an invoice for each expenditure. He said this requirement makes the treasurer responsible. He explained that if either the treasurer or the candidate were allowed to be responsible, then the responsibility is not clear which creates a messy situation.

Mr. McKee said whoever signs the report is responsible for the accuracy and truthfulness of the reporting.

Mr. Healy said in his view, when the state's money is involved, the treasurer should be the one responsible for check writing and it should be separate from other duties. This diminishes the ambiguity of joint responsibilities.

Mr. McKee said the treasurer has the option of not signing the report if the documentation is not accurate. Mr. Healy agreed but stated that most people do not operate that way unless they are professional accountants and know the consequences of the failure to make sure the report is accurate. He said most treasurers are just average people who may not adhere to those kinds of standards.

Mr. Wayne said it would require some candidates to change their practice but the change is manageable. He suggested having an exception which would allow the treasurer to transfer the records and responsibility over to the candidate after the election.

Mr. Healy suggested requiring Clean Election Act candidates to state on the registration form whether the candidate or the treasurer would be responsible for maintaining the campaigns records. In addition, he thought that it would be reasonable to recommend to the Legislature that MCEA treasurers and deputy treasurers have sole check writing authority in order to place a greater level of accountability and control over how public campaign funds are used.

Mr. Wayne said this suggestion could be put into the statute recognizing that there may be pushback from the Legislature.

Mr. McKee stated the Commission is in the position of recommending this policy change because it is the body that deals with the issue of the misuse of public funds on a relatively frequent basis. Therefore, the Commission can recommend this proposal as an adequate safeguard. However, it is ultimately up to the Legislature to decide what it will do with the recommendation.

Ms. Matheson raised concern over making the process more difficult for someone who simply wishes to run for the House of Representatives. Mr. McKee said that was a valid concern.

Rep. Les Fossel said over the last ten years he has run both as a traditionally financed candidate as well as a Clean Election Act candidate. He said having a competent treasurer is a wonderful thing but is not always possible. He said as a candidate, he feels his obligation is to make sure the records and reports are accurate. He said this past election he ran as a traditionally financed candidate and was his own treasurer and kept all the records himself. He said having a treasurer who can perform checks and balances is valuable; however, the Commission should keep in mind that this is not a huge amount of money for the House races. He cautioned that if the process is too burdensome it may discourage people from running. He said he understands that the Commission has to oversee the process. He said if someone cannot find a treasurer they can trust, they will stay away from the Clean Election process because the candidate is the one who is ultimately responsible for the money. It is the candidate's name that will be in the newspaper headline if there is a problem.

Rep. Terry Hayes said she ran as a Clean Election Act candidate four times and this past election as a traditionally financed candidate. The candidate is the person who signs the declaration of intent, agrees to

follow the rules and laws, and should be responsible for how the money is spent. If someone is running for the Legislature and they cannot keep track of \$4,800, that is a bigger problem than picking a treasurer. She said safeguarding the use of the money has nothing to do with the treasurer, the responsibility lies with the candidate. Their name is on the line. She said requiring a treasurer to sign checks simply adds another layer of bureaucracy in a small House campaign. She said the candidate signs the contract with the Ethics Commission stating that he/she agrees to do certain things as a candidate. She said the treasurer is a quite often a treasurer in name only.

Mr. McKee said having someone else keep an eye on a candidate's campaign finances was important to safeguard public funds. However, he said he did not want to discourage folks from running for office.

Rep. Hayes said a solution could be a training session for new candidates and treasurers. She said the bottom line should be about the candidate and holding them responsible. The candidate qualifies for the funds, not the treasurer. She said someone who wants to cheat cannot be stopped, they will figure out a way around the safeguards. She said the remainder of the candidates who are doing everything correctly are getting punished when there is no intent to do anything wrong.

Mr. Healy stated that this testimony causes him to sit back and think again about his position. However, he said opening it up and letting the candidates do all the bookkeeping without any safeguard of another set of eyes will increase the chance of misuse of public funds.

Rep. Fossel disagreed. He said with any group of people there will be some who will game the system. He said the candidates more likely to misuse funds are those that are not in a competitive race. There will be candidates that do not need the money and will find legal creative ways to waste it. He said changing the rules will not change that fact.

Mr. Healy said, what Rep. Fossel was saying in summary, was that the change is not worth the trouble and will discourage people from running.

Rep. Fossel said further that adding yet another bar for new candidates coming into the process who have not had experience with the system, would be more discouraging.

Ms. Gardiner asked if the language provided in the change drafted by staff which provides a second set of eyes and makes the treasurer jointly responsible with the candidate was acceptable in Rep. Fossel's view.

Rep. Fossel said it would not make any difference who reports to the Commission. He said the candidate will appoint a treasurer who can be trusted. He said Maine is a place of relationships and a place where we trust each other. He said he knows what the Commission goes through on a regular basis but this is not going to make a difference in honest reporting practices.

Mr. Healy said he would like to withdraw his suggestion and move on.

Robert S. Howe of Howe, Cahill & Company, representing the Maine Citizens for Clean Elections, said he had been a candidate many years ago. He said his treasurer was someone well known in the district and gave him recognition as a candidate. He said he served as a Clean Election candidate's treasurer recently to give that candidate the benefit of his name recognition. He said if the current law allows MCEA candidates to choose treasurers simply for name recognition, the requirement that an MCEA candidate cannot serve as the treasurer does not serve any purpose. An option may be to require the candidate to write the checks and file the reports unless the candidate chooses to have a treasurer that will actually do the work. He said allowing candidates to choose and note on the registration form who they want to be responsible is another option. He said the candidate should be held responsible but in a busy campaign he/she should be allowed to appoint someone. He recommended the Commission put something forward for debate and not leave the status quo.

Mr. McKee said regarding the issue of allowing governors-elect to personally raise contributions or authorize others to raise funds for their campaign, he would support the latter. He said having others raise funds for a committee is a step in the direction of diminishing the influence of contributors.

Ms. Amero asked whether this issue was specific to Clean Election candidates and Mr. Wayne said it applied to the governor-elect, regardless of financing.

It was decided to go forward with the staff's proposal with the modifications that had been discussed and agreed upon at the meeting.

**Agenda Item #7. Initiation of Rule-Making**

The Commission considered whether to initiate a rulemaking concerning amendments proposed by Commission staff. If the Commission agrees, the Commission could hold a public hearing to receive comments at the Commission's January 17, 2013 meeting.

Mr. McKee moved to initiate rulemaking concerning the proposed amendments to the Commission's rules and to receive public comments at the January 17, 2013 meeting. Mr. Duchette seconded.

Motion passed unanimously (5-0).

**EXECUTIVE SESSION**

At 11:10 a.m. Mr. McKee moved to go into executive session pursuant to Title 1 of the Maine Statutes, section 405(4). The Commission went into executive session pursuant to Title 1, section 405(6)(E) to consult with the Commission's counsel concerning pending or contemplated litigation and pursuant to Title 1, section 1013(3-A) to discuss whether to pursue an ethics complaint.

Mr. Duchette seconded. Motion passed unanimously.

At 11:20 a.m., Mr. McKee moved to come out of executive session. Ms. Amero seconded. Motion passed unanimously.

Mr. Duchette moved to adjourn and Ms. Matheson seconded the motion, which passed unanimously.

The meeting adjourned at 11:21 a.m.

Respectfully submitted,

*/s/ Jonathan Wayne*

Jonathan Wayne, Executive Director