



Minutes of the July 29, 2013, Meeting of the
Commission on Governmental Ethics and Election Practices
Held at the Commission Office, 45 Memorial Circle, Augusta, Maine
and Preti Flaherty Office, Beliveau Room, 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 9:00 a.m., Chair Walter McKee convened the meeting.

In consideration of the Commission's practice to address agenda items out of order to accommodate the attendance of public participants regarding particular items, the following agenda item was taken out of order:

Agenda Item #2. Hearing Concerning Spending to Influence 2012 Election for Maine House of Representatives, District 1

The Commission held a hearing to receive sworn testimony concerning spending to influence the 2012 election for Maine House of Representatives, District 1. The hearing was held at the office of Preti Flaherty law firm, Beliveau Room, and in the Commission's office in Augusta, Maine.

The Commission received testimony by videoconference from Norman Nadeau, Michael Nadeau's brother, Ronaldo Thibeault, Michael Nadeau's step father, Alicia Nadeau, Michael Nadeau's daughter-in-law and bookkeeper for Mike's & Sons and Steven Daigle, owner of Paper Signs Ink. Testimony was also heard by Hon. Andre E. Cushing III and Detective Margie Berkovich who were present at the hearing in Augusta. The Commission deliberated after hearing testimony from all parties and voted on the following motions:

Motion: To find that there was insufficient evidence to determine that the candidate, Allen Michael Nadeau, was the true source of the \$1,475 used to pay for the Citizens for Effective Government mailing.

Made by: Mr. McKee

Seconded by: Ms. Amero

Vote: 5-0 (motion passed)

Original Motion: To find that there was no candidate's political committee in this case.

Made by: Mr. Healy

Seconded by: Ms. Amero

Amended Motion: To find that there was no candidate's committee and no political committee authorized by the candidate to accept contributions on his behalf in this case as it relates to the expenditure of \$1,475 on the Citizens for Effective Government mailing.

Made by: Mr. Duchette

Seconded by: Mr. Healy

Vote: 4-1 (motion passed) Ms. Matheson opposed.

Motion: To find that the treasurer, L. Philip Soucy, was not an agent of the candidate for purposes of the statute (21-A M.R.S.A. § 1015(5)) with respect to making the expenditure of \$1,475 on the Citizens for Effective Government mailing.

Made by: Mr. Duchette

Seconded by: Mr. Healy

Vote: 5-0 (motion passed)

Original Motion: To find that James Majka, as an agent of the candidate, violated the clean election law by placing the ad in the Fiddlehead Focus.

Made by: Mr. McKee

Seconded by: Ms. Matheson

Amended Motion: To find that, by making the expenditure for the Fiddlehead Focus ad as an agent of the candidate, James Majka made a contribution to the candidate and that Mr. Nadeau accepted the contribution in violation of the clean election law.

Made by: Mr. McKee

Seconded by: Ms. Matheson

Vote: 4-1 (motion passed) Ms. Amero opposed.

Motion: To find that James Majka purchased the Fiddlehead Focus ad at the request or suggestion of the candidate, Mr. Nadeau.

Made by: Mr. McKee

Seconded by: Mr. Duchette

Vote: 3-2 (motion passed) Mr. Healy and Ms. Amero opposed.

Motion: To find that L. Philip Soucy did not make a material false statement by signing the affidavit submitted with the independent expenditure report filed on November 1, 2012 (for the Citizens for Effective Government mailing).

Made by: Mr. Duchette

Seconded by: Mr. Healy

Vote: 5-0 (motion passed)

At the conclusion of Agenda Item #2, the Commission resumed the scheduled order of agenda items.

Agenda Item #1 Ratification of Minutes of the April 5, 2013 Meeting

Ms. Amero moved to accept the minutes as drafted. Mr. Healy seconded. Motion passed unanimously. (5-0)

Agenda Item #3. Complaint against Governor LePage Re-Election Campaign on Over-the-Limit Contributions

Mr. Wayne explained that the Maine Citizens for Clean Elections requested that the Commission determine whether Governor Paul LePage's re-election campaign accepted three contributions that exceeded the \$1,500 limit for the 2014 primary election which were reported on the January report. During the compliance review of the report, the candidate registrar noticed the error and contacted the treasurer who at the time was Mr. Rick Swanson. Due to the previous data entry errors by Mr. Swanson, the candidate registrar preliminarily believed that the money was not reported correctly and therefore this was most likely an error not an actual over the limit contribution. The candidate registrar requested that the treasurer send her certain information in order to clear up the possible error; however, the information was not received in a timely fashion. Mr. Wayne explained that the campaign has a new treasurer who confirmed that an error

was made in accepting the and has returned the contributions. Mr. Wayne said that the new treasurer has admitted that there were not sufficient procedures in place for screening by the campaign in the past and the new steps he is implementing will avoid these errors going forward. Mr. Wayne said for consistency's sake, the staff advises not to enforce a penalty since gubernatorial campaigns have many volunteers involved in fundraising including online donations and communication is not always very effective. He said quite often there will be over the limit contributions made inadvertently in these larger campaigns.

Mr. McKee said unfortunately there was a delay of several months between notifications to the campaign.

Mr. Wayne agreed and said the Commission should have followed up more diligently when the information was not received in a timely fashion. He said he received the letter from MCCE in early June asking for more information regarding the contributions and a few days later they filed the complaint.

Andrew Bossie, Executive Director for Maine Citizens for Clean Elections (MCCE) said they regret that their letter dated July 25 could be interpreted to be critical of staff performance or procedure. That was not their intent. . He said the information in the correspondence, however, is accurate in their view.

Mr. Bossie said the request for investigation was submitted because of the apparent violations in the reports filed by the LePage Re-Election Campaign. These reports were filed on the public website and the period of time that had passed since the filing without any corrections was significant and concerning. He said laws regarding contribution limits and disclosure serve the public interest and the public trust rests on accurate reporting and adherence to the law. He said while understanding mistakes do happen, failure to correct the mistakes in a timely fashion or failure to institute procedures that prevent problems from occurring cannot be common practice. He said MCCE disagrees with the Commission staff recommendation for these reasons. He stated that due to the way the staff handled this situation, the MCCE strongly believes there are flaws in the process and urges the Commission to take a closer look at the staff's procedures for compliance review of the reports. He said the staff's role to be helpful to campaigns should be separate and distinct from regulation of the finance laws.

Mr. McKee said the staff person should have some flexibility with making a determination of the level of non-conformity. He said everything that is found to be in error on reports should not be brought before the

Commission. He asked what standard, in MCCE's view, should be used and where should the line be drawn to assess the many different reporting error scenarios.

Mr. Bossie said in this particular case, once MCCE discovered the error they also learned it was a long period of time before anything was done to correct the mistakes. He said the error was reported to the campaign but not rectified which is not right. He suggested that if an error is not rectified within a certain period of time, the issue should be followed up by higher authority such as the Executive Director or the Commission.

Mr. Duchette explained that when reviewing matters such as this, the Commission has used the standard of what is the harm to the public when assessing the severity. He said just prior to an election, the severity is quite high, however, this far out from the election the level of severity is lower. He did agree that the delay in fixing the error was an important issue.

Mr. Bossie stated that the harm in this situation is, if the reporting system is not accurate and cannot be taken at face value then what kind of reporting system do we have to rely on. He said the penalty should be the same amount of the contribution that was made which is inconsequential in the scope of this campaign. He said there needs to be teeth behind the laws and the penalty is those teeth.

William P. Logan, Esq., treasurer for the LePage Re-Election campaign, stated that this was his mistake. He took over from the prior treasurer and indications were that the previous treasurer had data entry difficulty which was why he was asked to take over the treasurer slot. He said previously he was the treasurer for the Maine Republican Party; however, this is his first time he has been a treasurer for a candidate's campaign, which is very different. He said he disagrees that nothing was done for a significant period of time because he was in contact with the candidate registrar who explained the error. He said there were five discrepancies that needed to be corrected. One was incorrectly reporting a refund of a contribution which was fixed and the four potential in-excess donations. He said reviewing the records he discovered the donations were from business entities not from individuals which was how they slipped through the cracks. He said this was his fault. He amended the report in February. He said he spoke several times on the phone with the candidate registrar during this time. He said he was waiting to get confirmation from the businesses and this took a while to come in. He said he did not know why, but

offered the possibility that since it was during the legislative session it was a busy time for lobbyists who work for some of the donors and these folks are loath to speak about fundraising during session due to the prohibition. He explained that none of the funds was spent and all have been returned. He amended the prior report to reflect the contribution which may not be the best way to fix the problem; however, there is no rule or regulation with regard to the process to disclose an overpayment. He said he would be happy to amend the reports further in any way the Commission decides would be appropriate. Mr. Logan acknowledged his error and said it was not intentional and explained a new recordkeeping procedure that will be followed going forward. He said regarding any penalties, the Commission should view the level of severity on a scale with other instances of this nature that have occurred in the past with gubernatorial campaigns. He said past practice by the Commission has been not to assess penalties on these types of violations and agreed with the staff recommendation.

Mr. Healy asked what the total excess amount was and Mr. Logan said the total was \$3,500. Mr. Healy asked if the campaign spent any of the \$3,500 or benefited in anyway during this time period and Mr. Logan said absolutely not.

Mr. McKee said it was clear there was a violation; however, the issue before the Commission is whether there should be any penalty assessed and if so what amount.

Mr. McKee moved to find the LePage Re-Election campaign was in violation for three over-the-limit contributions. Mr. Duchette seconded.

Motion passed unanimously. (5-0)

Mr. McKee asked for clarity with regard to the Commission's past practice regarding penalty assessment for matters of this nature.

Mr. Wayne explained that there have not been many so there is no established past policy. He said it depends upon the circumstances.

Mr. McKee wondered if entities give over-the-limit donations in order to be categorized as super donor by the campaigns even if the funds have to be returned to the donor. He was puzzled as to why a donor would go over the limit otherwise.

Mr. Duchette said corporations may play into that as opposed to an individuals. He said these donors are very large corporations and may not have a system to double check whether they have made a contribution.

Mr. Healy said he could not understand why a corporation would want to risk having their name in the newspaper as giving an illegal contribution.

Ms. Amero moved to accept the staff recommendation and assess no penalty for the violation. Mr. Duchette seconded.

Motion passed unanimously. (5-0)

Mr. McKee said with regard to developing new procedures for oversight of the reporting, he felt the Commission should not get involved with internal management of the staff's process. He said it would be like weekend warriors giving advice to those on active duty.

Mr. Wayne said the MCCE is encouraging the Commission to look over the procedures and the staff is happy to do so. He said this has been a healthy discussion with regard to how the staff performs compliance reviews and follow ups.

Mr. McKee suggested that in the future the Executive Director should be made aware of any significant dollar amount such as this.

Ms. Matheson expressed concern over the timing delay and said following up in two weeks is not really enough time in the political world, in her view.

Mr. Wayne said the candidate registrars see many, many issues and there are 500 candidates that are being reviewed with dozens of contributions. He said most issues discovered are minor and this type of error is

usually a simple data entry error. He explained that the registrars are very good about bringing up more serious issues such as this one to his attention or the attention of the Assistant Director. However, in this particular case, the registrar viewed it as a less serious issue than it was and therefore did not follow the normal notification process with him.

Agenda Item #4. Complaint of Late Lobbyist Registration/Humane Society of United States

Rep. Dale Crafts filed a complaint that the Humane Society of the United States was late in registering a lobbyist for the 2013 legislative session and failed to file monthly reports on time. Kathleen Hansberry of the Humane Society acknowledges that she was late, but argues that she did not meet the requirements to register until April 2013. He explained that staff met with Ms. Hansberry and also asked for more specific additional information from Rep. Crafts. In July, the Commission received a detailed letter from Ms. Hansberry listing dates and what her lobbying activities were beginning in 2013. He said the staff found her additional information plausible; however, the complainants feel she should have registered earlier than she is claiming. She requests a waiver of the preliminary penalties totaling \$300.

Mr. McKee said this issue has come before the Commission on several occasions and it is difficult because the perception of what constitutes lobbying is sometimes more inclusive than what meets the actual definition of lobbying.

Kathleen Hansberry, Maine Director of the Humane Society of the United States, gave a brief overview of her situation. She said as soon as this was brought to her attention, she took action to rectify it. She explained that she went online to register on February 22 and filled out the form but it did not go through. She believed she had registered but learned after speaking to staff that her registration was in the system as pending. She said she was a new lobbyist and knew about the requirement to register but was not involved with the Legislature during 2012 so this session was her first experience. She said she was at the State House early on introducing herself, establishing a presence and learning the process. She explained that it may have appeared to people in the State House that she was lobbying but she was not. She also explained that Jay Nutting of Maine Street Solutions was hired by her organization to do lobbying since he had established relationships. She said once she was made aware of the reporting requirement she took care of the filing. She said with regard to her December lobbying, she was not directly involved with lobbying and did not meet with any individuals or legislators.

Mr. Healy is associated with Maine Street Solutions and under the Maine Bar Rules recused himself from consideration of this item.

David Trahan, Executive Director of the Sportsmen's Alliance of Maine, said he understands Ms. Hansberry is new at lobbying; however, she is an attorney and should be aware of Maine law. He said this is a nationwide organization that has registered in the past and participated in the legislative process. He said lobbyists are very sensitive to the law which states when you reach the eight-hour threshold registration is required. He said the fact that Ms. Hansberry tried to register in February shows that she knew she had reached the threshold and should be held accountable. He said Ms. Hansberry was accompanying Mr. Nutting while he lobbied in February. He said it would be appropriate to assess a penalty from the February 22 attempt to register.

Mr. McKee questioned whether simply accompanying a lobbyist would count as actual lobbying and require reporting.

Mr. Trahan said he does have his office manager accompany him and so he registered her as a lobbyist associate. He explained that in her role as Director Ms. Hansberry had to be engaged in discussions and making decisions. He said her participation in committee meetings with Jay Nutting was a red flag for him. He said folks in the lobbying business are very, very careful and have to play by the same rules.

In response to Mr. McKee's question with regard to going back to the February registration attempt, Mr. Wayne explained that some lobbyists register well before reaching the eight-hour threshold.

Mr. McKee moved that the Commission find Ms. Hansberry in violation for failure to register in April. Mr. Duchette seconded.

Motion passed unanimously. (4-0) Mr. Healy abstained.

Mr. Duchette moved to assess a penalty of \$200. Mr. McKee seconded.

Motion passed 3-1 with Ms. Amero opposed and Mr. Healy abstaining.

Agenda Item #5. Audits of Maine Clean Election Act Candidates

Mr. Dinan explained that most of the audits found no violations. He said four of the audits had minor findings. The first was Rep. Arthur Verow. The campaign overstated seed money expenditures by \$200 and therefore the candidate received an additional \$200 in MCEA funds. He explained that Rep. Verow is a first-time candidate and the remainder of his audit was trouble-free. The staff recommends that the \$200 be repaid to the Clean Election fund and assess no penalty.

Rep. Verow explained he was a first time candidate who made a misstep which he is embarrassed by. He said this was an inadvertent error. He explained further that he deferred a payment for an expenditure after the seed money period which resulted in his receiving additional funding. He stressed that he did not spend beyond what he was allowed. He also said that he received a donation from a friend in the form of a check and returned it.

Mr. Healy moved to adopt the staff recommendation to repay the \$200 and assess no civil penalty. Mr. Duchette seconded.

Motion passed unanimously. (5-0)

Mr. Dinan explained that Jodi James was a candidate in House District 106. The findings were missing vendor documentation and payments made with no receipt for the invoices. The staff recommends Mr. James be assessed a \$50 penalty for violation of 21-A M.R.S.A. § 1125(2-A)(B)&(C).

Mr. Duchette moved to find Mr. James in violation and assess a \$50 penalty. Ms. Amero seconded.

Motion passed unanimously. (5-0)

Mr. Dinan said Christopher J. Kessler was a candidate for House District 122. He failed to deposit all his seed money in his campaign bank account. The staff recommends Mr. Kessler be found in violation of 21-A M.R.S.A. § 1125(7-A) and assess no penalty.

Ms. Matheson moved to find Mr. Kessler in violation and assess no penalty. Ms. Amero seconded.

Motion passed unanimously. (5-0)

Mr. Dinan said Glenn Curry was a candidate for Senate District 23. Mr. Curry was found in violation of 21-A M.R.S.A. § 1125(7-A) for commingling public funds.

Ms. Amero moved to find Mr. Curry in violation and assess no penalty. Mr. Duchette seconded.

Motion passed unanimously. (5-0)

Agenda Item #6. Presentation of Final Audit Report

Mr. Dinan said this report notes a continuing improvement in the overall level of compliance by Maine Clean Election Act candidates. He said 22% of all publicly funded candidates who applied for funds were audited, 41 from the House and 12 from the Senate candidates. He said 86% were found to be fully compliant which is a 5% improvement over 2010. He said when audits began in 2006, only 67% were in compliance. He explained that the programs in place to educate the candidates has paid dividends. He said one area of concern is candidates do not gather expenditure and contribution documentation contemporaneously with campaign activity. He said half of the candidates audited have to contact their vendors and banks in order for the audit to be completed and this has been the case since the process began in 2006. He said other areas of concern were to make certain that campaign treasurers are actively involved in the bookkeeping which although has improved over the years, could still be better. He also said information technology systems are very helpful but could be improved. Lastly, aggressive compliance monitoring by candidate registrars needs to continue.

Agenda Item #7. Request for Waiver of Late-Filing Penalty/Christopher O'Neil

Lobbyist Christopher O'Neil was one day late in filing a monthly lobbyist report for Delta Dental Plan of Maine that was due April 16 covering the month of March 2013. Eight days before the deadline, Mr. O'Neil entered the information relating to his March lobbying in the Commission's e-filing system in the wrong monthly report and then did not press the on-screen button to file the report. Upon receiving notice that the March report was not filed on time, he promptly re-entered the data and filed the March report

correctly. Because the report is only one day late, the preliminary penalty is \$50. Mr. O'Neil requests a waiver of the preliminary penalty due to his effort to file the report in advance of the deadline, timely remediation, and his record of compliance with reporting requirements. Mr. Wayne explained that Mr. O'Neil provided a copy of a receipt today.

Christopher O'Neil said he would not usually spend eight hours of his day to protect a \$50 fine but in his business an ethics violation is poison so he is here to protect his record. He said in preparing for the meeting today he discovered a filed copy of three receipt emails for the report in question. He said at that point he believed he was all set.

Mr. Healy moved to find no violation. Mr. McKee seconded.

Motion passed unanimously. (5-0)

Agenda Item #8. Request for Waiver of Late-Filing Penalty/Candidate Stuart Pennels

Stuart Pennels was a candidate for the Maine House of Representatives in District #111 in Windham. He was required to file a campaign finance report 42 days after the general election on December 18, 2012. The report was filed one day late on December 19, 2012. He requests a waiver of the preliminary penalty amount of \$24.66, stating that his treasurer tried to file the report on the deadline but the Commission's e-filing system rejected it.

Mr. McKee moved to accept the staff recommendation and decline to waive the penalty. Ms. Matheson seconded.

Motion passed unanimously. (5-0)

With regard to the House District 1 hearing, Mr. Wayne said the staff will write a determination and asked whether the written determination should come before the Commission at a public meeting.

Ms. Gardiner said another meeting needs to be held to determine any penalties. She suggested preparing findings of facts and conclusions of law that were approved by the Commission based upon the hearing and deliberations today and leave the penalty determination blank.

Mr. Healy asked when the determination would be considered final and Ms. Gardiner said when the Commission is completely done with any edits and authorizes the Chair to sign it. She said at the bottom of the determination below the Chair's signature will be a notice to all parties that this constitutes final agency action and may be appealed to Superior Court.

Mr. McKee asked if Commissioners could communicate any comments or suggest changes before meeting again. Ms. Gardiner said Commissioners could communicate any suggestions by a one-way email but any deliberations as a group by email would not be appropriate. These communications will be part of the record she said.

Mr. Wayne also asked whether he should invite any written submissions from Rep. Nadeau's attorney or Mr. Majka on the issue of penalties.

Mr. Duchette questioned whether Mr. Majka was liable and given sufficient notice.

Ms. Gardiner said that would be another opportunity for discussion at the next meeting. It is not a final determination until the Commission makes its written findings and conclusions.

Mr. Wayne said he would put Mr. Majka on notice for the next meeting.

Mr. Healy said the Commission could change some of its findings after hearing from Mr. Majka at the next meeting.

Mr. Wayne said there is another investigative matter regarding a PAC involved in a casino in Lewiston that needs to be brought before the Commission this fall.

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

The meeting adjourned at 5:30 p.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director