



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

Minutes of the April 18, 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 9:01 a.m.

The Commission considered the following items:

1. Ratification of Minutes of March 3, 2017 Meetings

Mr. Nass made a motion to adopt the March 3, 2017 minutes as written. Mr. Pattershall seconded the motion. Motion passed (5-0).

2. Request for Waiver of Late-Filing Penalty – Yarmouth Republican Town Committee

Mr. Wayne said the Yarmouth Republican Town Committee (the Committee) raised or spent more than \$1,500 in 2016 which triggered the requirement to file campaign finance reports for the 2016 election cycle. The Committee filed all campaign finance reports on time for the first half of 2016. Both the treasurer and chair resigned just prior to the October 28th filing deadline for the 11-Day Pre-General Report leaving the Committee with no one to file the remaining reports. The 11-Day Pre-General Report and the January Semiannual Report were both filed on February 17th, 112 days and 31 days late, respectively.

Sam Eddy, treasurer for the Committee, and William Gardiner, chair for the Committee, appeared before the Commission. Mr. Eddy said the late filings occurred because the former treasurer abruptly left the state for an employment opportunity prior to the October filing deadline and the Committee had no access to the records he maintained. He said shortly after the treasurer resigned, the chair also resigned because of increased business demands.

Ms. Matheson asked when Mr. Eddy was appointed as treasurer. Mr. Eddy said he was sworn in at the end of January and the new chair was sworn in at the end of February.

Mr. Lee asked why the first late-filing was not caught sooner. Mr. Wayne said staff attempted to contact the Committee but because both the treasurer and chair had left, the contact information on file was no longer valid.

Mr. Lee asked if the violations had been combined when calculating the penalty. Mr. Wayne said staff had treated the violations as a first offense because both late filings were the result of a single event.

Ms. Matheson said the mitigating factors in this case were similar to the mitigating factors in the Androscoggin County Republican Committee, without the malfeasance. She said she was inclined to reduce the combined penalties to \$100.

Mr. Lee made a motion to find a violation but reduce the statutorily calculated penalty for the 11-Day Pre-General report to \$75 and reduce the statutorily calculated penalty for the January Semiannual Report to \$25. Mr. Nass seconded the motion. Motion passed (5-0).

3. Request to Investigate Lobbying by Former Rep. Adam Goode

Mr. Wayne said Rep. Sheldon Hanington had filed a request for investigation regarding former Rep. Adam Goode for a possible violation of the law regarding lobbying by former legislators. He said 1 M.R.S.A. § 1024 prohibits former legislators from engaging in activities that would require them to register as a lobbyist or lobbyist associate for one year after a legislator's term ends. This restriction became effective with legislators who served in the 127th Legislature, which ended in December 2016.

Mr. Goode served in the 124-127th Legislatures. In January 2017, Mr. Goode was hired by the Maine AFL-CIO as its Legislative and Political Director. The Executive Director of the Maine AFL-CIO contacted the Commission staff both before and after hiring Mr. Goode, to understand the constraints on lobbying by a former legislator. The Commission staff advised them that the former legislator would need to keep his lobbying time under eight hours in a calendar month. Mr. Goode also contacted the Commission staff to get a clear understanding of what activities count toward the 8-hour threshold. The staff provided that information and strongly recommended he keep detailed records of his activities.

Rep. Sheldon Hanington appeared before the Commission. Rep. Hanington said he has served in the 127th and 128th Legislatures. He said members of the House and Senate Republican caucuses were concerned when former Rep. Goode started appearing before legislative committees as a lobbyist. He said he viewed being a legislator as a 24-hour occupation and believed being a lobbyist was similar.

Ms. Matheson said Rep. Hanington's interpretation of what constitutes lobbying is different than what is in the statute. Rep. Hanington said he believed lobbying includes time spent preparing testimony; travel to and from the State House; and waiting to testify, as well as testifying, before legislative committees.

In response to a question from Mr. Nass, Rep. Hanington said even if the former legislator was not officially lobbying, there would always be a question about whether they were lobbying anytime they spoke with a legislator. Mr. Nass said this could be corrected by either eliminating the 8-hour threshold for lobbying or removing the restriction against lobbying on former legislators. Rep. Hanington said he believed it was important that there be no room for doubt about whether lobbying was happening. He said that he supported the restriction on former legislators from lobbying.

Ms. Matheson said there was a very narrow definition of lobbying: direct communication and time spent preparing and presenting oral or written testimony to influence legislation. She said she believed the 8-hour threshold was put in place to allow citizens to speak before the Legislature but not have to register as a lobbyist.

In response to a question from Mr. Pattershall, Mr. Wayne said that this was the first instance of a complaint being brought under this provision.

Mr. Lee said in the second paragraph of his letter to the Commission, Rep. Hanington wrote that he had knowledge about the time spent to prepare testimony and asked Rep. Hanington to share this knowledge. Rep. Hanington said he has spent approximately an hour on each of the seven testimonies he has done this session. He said this estimate was based on having an aide assist him and said the time could easily double without the assistance of an aide. Mr. Lee asked how much time it would be if the aide's time were included. Rep. Hanington said it could be two or

three hours depending on the bill. Mr. Pattershall asked how the Commission could get evidence of how much time Mr. Goode spent on his testimonies. Rep. Hanington said the Commission could get copies of his phone and computer records but conceded that could take a long time and it could be difficult to get those records. He recounted how he had seen former Rep. Goode talk with four different Senators one day and how he had followed-up with one of the Senators to ask about their conversation with Mr. Goode. He said the Senator told him Mr. Goode had spoken with each of them individually and that his conversation with Mr. Goode had lasted approximately 10-12 minutes.

Mr. Lee asked for clarification on how much time a full-time lobbyist spends lobbying each month. Mr. Wayne said lobbyists report a lot of information, such as what bills they lobbied on, how much they were compensated, but not the amount of time spent lobbying. Mr. Lee said his question was whether most lobbyists exceed 8 hours a month. Ms. Gardiner said because lobbyists are not required to report their time, it would be impossible to know without getting the lobbyist's billing records. Mr. Lee said it was difficult to believe anyone exceeded the 8 hours given how narrow this definition was.

Mr. Nass said when a former legislator returns to the State House, introduces himself as the AFL-CIO legislative and political director and talks with current legislators, even if the conversation did not involve a discussion of legislation, the contact is lobbying because the former legislator is then associated with the organization and the bills it supports or opposes, and the legislators are aware of that as they consider legislation. He said former legislators are extremely sought after as lobbyists because of their history and connections. Ms. Matheson said she understands the perception but that it is not covered in statute.

Katherine Knox, Esq., counsel for the Maine AFL-CIO and Adam Goode, appeared before the Commission. Ms. Knox cautioned the Commissioners to focus on the current law and not conflate what the law is now with what the law could or should be. She said most lobbyists carefully follow the law and maintain very good records. Ms. Knox said the Maine AFL-CIO did its homework prior to hiring Mr. Goode to ensure there would be no violation of the law. She said she worked both with the Maine AFL-CIO and Mr. Goode on his tracking form to make sure it accurately reflected Mr. Goode's time and there is no evidence that he exceeded the

8-hour threshold. She said many of the bills Mr. Goode worked on were not new and the preparation of testimony did not involve a lot of time. In addition, Mr. Goode did not actually draft all of the testimony he presented and the Maine AFL-CIO was careful in scheduling his appearances at the State House. Ms. Knox said Mr. Goode's job description was specifically tailored to respect the restrictions on Mr. Goode's status as a former legislator. She said there was no evidence to support opening an investigation against Mr. Goode and that simply being uncomfortable with his status as a former legislator was not grounds for an investigation.

Mr. Nass accepted Ms. Knox's statements but said the difference was that Mr. Goode is a former legislator, which puts a different perception on all of his interactions. Ms. Knox said there is not a different definition for lobbying for a former legislator. She said it is the content of the conversation that counts toward lobbying not just having a conversation. Ms. Nass said introducing oneself as the legislative and political director of the Maine AFL-CIO makes any conversation with a legislator lobbying. Ms. Knox disagreed and said the conversation has to have a nexus with legislation.

Ms. Matheson said the reason this matter is before them is that the situation makes people uncomfortable. However, they need to follow and apply the law and not let any discomfort with the appearance issue color the facts. Ms. Matheson asked if Mr. Goode completed the tracking sheet contemporaneously. Ms. Knox said it was kept daily because it would be difficult to recreate it otherwise. Ms. Matheson said unless something comes to light, she would not support an investigation because of the diligence Mr. Goode exercised in this matter. Mr. Pattershall said the statute does not allow the Commission to impose a penalty unless someone intentionally violates this statute and he does not see any evidence of an intentional violation with Mr. Goode.

Mr. Nass asked Ms. Knox when a legislator's term ends. Ms. Knox said when the new legislators are sworn in. Mr. Nass said a lot of legislative activity takes place in December and he does not see any activity for Mr. Goode in December. He asked if Mr. Goode has an employment contract. Ms. Knox said there was no evidence to support an investigation or necessitate the production of Mr. Goode's employment contract. Mr. Nass said they have no way of knowing whether or not Mr. Goode's tracking sheet was valid. Ms. Knox said there was no reason to believe it was not valid. It was the burden of the party making the complaint to provide the evidence that it was not valid. Mr. Nass said the presence of a former legislator at

the State House meets the definition of lobbying, which is why hiring a former legislator is highly effective.

Mr. Lee suggested that Mr. Nass should direct his question about the definition of lobbying to Ms. Gardiner as the Commission's counsel. Ms. Lowry agreed and said that definition would guide the investigation. Ms. Gardiner said the statutory definition of lobbying does not refer to a lobbyist's effectiveness because of who they are, their experience, their relationships with legislators, or good will built up over time even though those factors may enhance their effectiveness as a lobbyist. She said the definition of lobbying is a narrow and technical one, designed to be as objective as possible so that people can know where the line is between lobbying and non-lobbying activities. Mr. Lee asked what that definition is. Ms. Gardiner said it is exactly what they have been saying: direct communication for the purposes of influencing a legislative action. Mr. Nass asked Ms. Gardiner whether someone who introduced himself as the legislative and political director of the Maine AFL-CIO during a conversation with a legislator was not lobbying and whether that conversation would not be lobbying unless he actually mentioned a bill. Ms. Gardiner said the conversation has to involve a defined legislative action and not just anything the employer might be interested in. She said relationship building between anyone in the State House is ultimately for the purposes of serving their constituents or an employer, but it may not necessarily constitute lobbying. Ms. Gardiner said Mr. Nass' arguments were good policy arguments for not having the 8-hour rule apply to former legislators because a former legislator may have more of an impact than a regular lobbyist. She said in the context of this provision, the Commission may be going down a slippery slope if it were to calculate the 8-hours by defining friendly conversations with legislators or a statement of an employer's interests as an effort to influence some unnamed, undefined legislative action.

Mr. Lee asked if they authorized an investigation, how the staff would conduct the investigation and what evidence could they find. Mr. Wayne said he believed most of the evidence had already been presented. He said the staff could request all documents and emails related to the bills Mr. Goode testified on and follow-up on reported conversations. Ms. Matheson said even if the tallies on the tracking sheet were off by fifty percent Mr. Goode would still be under the 8-hour threshold.

Mr. Lee asked Ms. Knox if she could estimate the amount of time per week she lobbies under the statutory definition of lobbying. He said 8 hours out of a month may not seem like a lot, but under the narrow definition of lobbying, it could be a considerable amount of lobbying time. Ms. Knox said that an estimate is difficult because there are many variables that come into play. Ms. Knox said she has approximately 25 clients for whom she lobbies. She said the beginning of the session – when the bills are being worked on at the committee level – is busier than later in the session when the bills are being voted on in the full House and Senate. Once a bill is out of committee, it is often just a matter of monitoring the status of a bill in the House and Senate, which does not count as lobbying. Ms. Knox said she would estimate she was currently spending approximately a total of 30 minutes per week actively lobbying for all her clients at this point in the legislative session. Ms. Lowry asked how much time Ms. Knox spent lobbying during January and February, the beginning of the session. Ms. Knox said she would estimate 4 hours per week overall for all 25 clients.

Ms. Matheson said that in some ways Mr. Goode's employment choice was unfortunate because of the questions about the appearance of impropriety it raised. Some people may think that it is contrary to the intention behind the statute; however, she said Mr. Goode and his employer acted within the legal boundaries. Ms. Matheson said she would not support further investigation.

Mr. Nass said he would like to know what Mr. Goode did during the month of December and what was in Mr. Goode's employment contract. Ms. Matheson asked what an employment contract would tell them. Mr. Nass said it would tell them when Mr. Goode began work. Ms. Gardiner said he began work at the Maine AFL-CIO on January 9, 2017. Mr. Nass said he would like a copy of the contract.

Mr. Pattershall said he could not fault Mr. Goode for doing something legally permissible, even though it may not look good. Mr. Pattershall said he would support a change in the law. He said it would be difficult to investigate and to find an intentional violation if the evidence is based on recollections of conversations between Mr. Goode and legislators.

Ms. Lowry said she found Ms. Knox's explanation of her lobbying work for clients useful. The time records kept by Mr. Goode on a daily basis do not indicate that the 8-hour threshold was

exceeded. Ms. Lowry agreed with Mr. Pattershall's rationale for not pursuing an investigation and does not support one.

Mr. Lee said that preliminarily, after first reviewing the material, he thought there was a reasonable possibility that the 8-hour threshold had been met. It is the burden of the complainant to bring forth evidence that a violation may have occurred. The respondent then has the opportunity to respond with his own evidence that a violation did not occur. It is the Commission's task to shift through the evidence to determine whether an investigation would find a violation. He said Mr. Goode and his employer did contact the Commission on numerous occasions about this matter and documented the time spent by Mr. Goode on lobbying. He said that he did not think that recollections of conversations that took place months ago would be reliable evidence. Mr. Lee agreed with Mr. Pattershall that, under the statute, there has to be intent to violate the statute. In this case, Mr. Goode and his employer were following the statute. Even if the time records were off, they would have to be substantially inaccurate because the amount of time recorded does not come close to the 8-hour threshold. He said he did not think it was reasonably likely that an investigation would result in evidence to support a finding of violation. Mr. Lee said he would support revising this statute.

Rep. Hanington said there were several inaccuracies in Mr. Goode's tracking sheet. Mr. Pattershall said the problem was not falsification of the tracking sheets but whether the 8-hour threshold was met. Rep. Hanington said this proved to him that the log was not done daily. The Commission reviewed documents pertaining to the hearing schedule of the Appropriations Committee. Mr. Wayne said revenue sharing was discussed at a joint committee meeting of the Appropriations and Taxation Committees on February 6th. Similarly, the Appropriations and Criminal Justice Committees met on February 15th and discussed the Downeast Correctional Facility. Mr. Goode said that he testified on the portions of the Governor's budget bill, L.D. 390, dealing with revenue sharing and the Downeast Correctional Facility, not on individual bills that had been referred to the separate committees.

Ms. Matheson asked what the procedure should be for voting on this matter: a motion to investigate which the Commission would vote for or against, or a motion not to initiate an investigation. Ms. Gardiner said because the statute is so new, it is not specifically addressed in the Commission's procedural rules. The statute says that the Commission may direct the staff to

undertake an investigation. She said if the Commissioners did not make an affirmative motion to direct staff to investigate, there would be no investigation. Ms. Gardiner said she believed the Commission had done it both ways in the past. The Commission has, in other matters, made a motion not to investigate, which brings the matter to a close so that the subject of the complaint does not have something hanging over their head.

Mr. Lee made a motion that there is an insufficient amount of evidence presented to request the staff to undertake an investigation of the complaint filed by Rep. Hanington. Ms. Lowry seconded the motion. Mr. Pattershall suggested the word evidence was not applicable in this case. Mr. Lee agreed to amend the motion to remove “amount of evidence presented” and replace it with “basis.” Mr. Lee accepted the friendly amendment. The amended motion was that there is an insufficient basis to request the staff to undertake an investigation of the complaint filed by Rep. Hanington. Ms. Lowry seconded the amended motion. Motion passed (4-1; Mr. Nass opposed.)

4. Recommended Penalties Against Hon. Dillon Bates

Mr. Wayne said this matter is a continuance from the March 3rd meeting. Rep. Bates ran as an MCEA candidate in 2014 and 2016. He did not return his surplus MCEA funds for the 2016 election until February 2017. Mr. Wayne said Rep. Bates’ return of the funds was delayed due to personal time constraints and his lack of check-writing ability on his campaign account. He said other than the failure to return surplus funds by the deadline Rep. Bates had satisfactory compliance with the MCEA program. Mr. Wayne said the commingling violation came to light during staff’s review of Rep. Bates’ campaign bank statements. Rep. Bates had talked with a former staff person at the Commission about leaving personal funds in his campaign account in order to keep the account open and had been advised that was permissible. Mr. Wayne said Rep. Bates maintained the funds in the account through 2015 and after receiving MCEA funds in 2016.

Katherine Knox, Esq., counsel for Rep. Bates, appeared before the Commission. Ms. Knox said after meeting with staff, Rep. Bates discovered and corrected a balance discrepancy, which was another reason for the delayed return of the funds. She said there was no doubt Rep. Bates was slow to return the surplus funds but that he never had any intention of keeping the funds. Ms. Knox said they do not object to the recommended penalty for the late return of funds and Rep.

Bates takes responsibility for this violation. She said they do object to the recommended penalty for the commingling because Rep. Bates had received advice from the Commission staff that it would be permissible to leave personal funds in his campaign account in order to keep it open.

Ms. Matheson asked for clarification on the \$330 left in the account. Rep. Bates said he had returned his surplus 2014 MCEA funds. The funds that were left in the account were his personal funds. His bank had told him the account would be closed if he did not leave funds in it. Mr. Nass said all the guidance talks about leaving a small amount in an account to keep it open and it appeared that the minimum balance for Rep. Bates to keep his account open was \$1. Ms. Knox said a candidate has to verify with their bank the minimum amount necessary to keep an account open and if the bank tells that candidate the account will be closed if they withdraw the funds then, from the candidate's perspective, it is easier to just leave the funds.

Mr. Lee asked why the staff had to make 11 attempts to get Rep. Bates to return the funds. Rep. Bates said he did not receive any voicemails because he did not have working voicemail but he did receive the staff's emails and letters. He said he was not able to get to the bank during normal bank hours because of his work schedule. Rep. Bates said he returned the funds as soon as he was able, which was during the February school break. Mr. Lee asked why he did not return the funds during the winter break. Rep. Bates said other obligations prevented him from returning the funds during December and there was some confusion about the amount to be returned. He said he did attempt to withdraw the funds in January but the bank informed him that he did not have sufficient funds available. Mr. Lee said the guidance is to return the funds remaining in the account and work with staff to reconcile the discrepancy. Rep. Bates said he believed he had to return the amount staff requested. He said on February 3rd he amended his campaign finance reports and the new balance matched what he believed he had to return.

Mr. Lee said he would find it hard to reduce the penalty given the amount of staff time spent on the attempt to get the funds returned. He asked Ms. Knox why the penalty should not be at least as high as the amount of the Commission's costs to get Rep. Bates to return the funds. Ms. Knox said that she understood the rationale behind Mr. Lee's point, but to her knowledge the Commission has never used the recovery of costs as a component in its penalty determinations. Mr. Lee said the difference between this case and others is that the obligation to return the funds is very clear and there is no possibility of confusion. The unspent MCEA funds must be returned

after the election. He said the statute has a range of up to \$10,000 for a possible penalty and does not specify the factors the Commission should consider in assessing a penalty. Mr. Lee said that the Commission's costs in recovering the funds are a legitimate factor to use in assessing a penalty. Ms. Knox said this is the first time a penalty has been imposed for a late return of funds. Ms. Matheson said she could not remember any past cases in which the Commission's costs to enforce the law has been used as part of the assessment of a penalty, even when the Commission has used an outside auditor. Mr. Nass agreed with Ms. Matheson and said he was more concerned about being consistent with the penalties. Mr. Pattershall said a penalty was not the only option available in this case; they could refer this case to the Attorney General's office. Mr. Lee said he believed it was important to emphasize the importance of returning the funds on time because this is apparently an ongoing issue. Mr. Wayne said there are always some late returners but they are usually in contact with staff to work out the problem that is preventing the return of funds.

Ms. Knox pointed out that staff had originally proposed a penalty of up to \$500 but after the staff's meeting with Rep. Bates, the recommendation had been reduced to \$200. Mr. Wayne said he understood the Commissioners might perceive this recommendation as being low but he has a concern that a higher penalty, which would have to be paid with personal funds, could have an adverse effect on the perception of the program.

Mr. Lee made a motion to assess a civil penalty of \$400 for the late return of funds. Mr. Pattershall seconded the motion.

Mr. Nass said candidates are different from PACs and party committees and this was not an insignificant fine for a candidate. He said there are personal ramifications when a candidate has to appear before the Commission and he would not support the motion.

Ms. Lowry said she was persuaded by the staff recommendation but she wondered why Rep. Bates had not provided written direction to the bank. Rep. Bates said he had tried but the bank informed him he needed to appear and personally withdraw the funds.

Ms. Matheson said she would not support any motion over \$200.

Mr. Pattershall said he believed the pending motion was a better outcome than a referral to the Attorney General's office. Mr. Lee said he believed the importance of this issue is emphasized by the range of possible penalties in the statute.

The motion failed (2-3; Ms. Matheson, Ms. Lowry and Mr. Nass opposed.)

Ms. Knox said this was not just about the monetary penalty but about the public perception and the reputational harm to Rep. Bates. She said there were a lot of news reports after the last meeting and there will be more after this meeting. Ms. Knox said Rep. Bates would have to answer to his constituents and questions from other legislators about this issue. Mr. Lee said he would state for the record that there was no evidence of criminal intent but he believed it was important to send a message about the timely return of public funds. In response to a question from Mr. Nass, Ms. Gardiner said there have not been any prior cases in which the only violation was the late return of funds.

Mr. Lee made a motion to assess a civil penalty of \$300 for the late return of funds. Ms. Lowry seconded the motion. Motion passed (3-2; Ms. Matheson and Mr. Nass opposed.)

Ms. Matheson said there have been multiple cases of commingling, most of which were discovered during the audit process. Ms. Lowry said this violation was different from the late return and she believed the penalty should be nominal. Mr. Pattershall asked if Rep. Bates had removed the personal funds from the account. Rep. Bates said that he had and the account was basically empty now. Mr. Wayne said that because there was some confusion about the staff's request for return of funds, he actually added money to the account in order to return what the staff was requesting and the Commission may have to return money to him.

In response to a question from Mr. Lee, Mr. Wayne said there is a rule change pending approval by the Legislature that would clarify the procedure for using personal funds to keep a campaign account open. Mr. Lee said he believed the language in the guidance was a mitigating factor in this case.

Mr. Lee made a motion to find that there was a commingling violation but, due to mitigating circumstances, to assess a civil penalty of \$50. Ms. Lowry seconded the motion. Motion passed (5-0).

5. Request for Waiver of Penalty – Hon. Diane Russell

Mr. Wayne said former Rep. Diane Russell ran as a traditionally-financed candidate for Senate District 27. Ms. Russell did not win the primary election for this seat. Ms. Russell filed her January Semiannual report one day early but did not report three debts totaling \$16,285.16. During a routine compliance review, Candidate Registrar Emma Burke noted that Ms. Russell had reported receiving contributions and followed-up with her about why she was still collecting contributions. The campaign responded that it was still accepting contributions to pay off three debts owed for legal fees. On January 30th, the campaign amended the January Semiannual Report to add the three debts. The staff considers the report late because it was substantially non-confirming.

Katherine Knox, Esq., counsel for Ms. Russell, appeared before the Commission. Ms. Knox said this was simply a mistake. Ms. Russell had the invoices but did not provide them to her treasurer. She said there was limited harm to the public because the debts were not election related.

Mr. Pattershall disclosed that seven years ago he represented a client against Ms. Russell and that he would recuse himself from consideration of this matter if anyone believed this caused a conflict of interest. No one objected.

Mr. Nass made a motion to find a violation but reduce the statutorily calculated penalty to \$300. Mr. Lee seconded the motion. Motion passed (5-0).

6. Request for Waiver of Penalty – Angela Westhoff

Mr. Wayne said Angela Westhoff registered as a lobbyist for the Maine Osteopathic Association on March 10, 2017. Ms. Westhoff indicated on her registration that she began lobbying in January and would exceed the 8-hours as of February 28th triggering the requirement for her to file the February lobbyist report, which she filed one day late. In her request for a waiver, Ms. Westhoff stated she believed her first report would be due in April because she had registered at the beginning of March.

Mr. Lee made a motion to impose the statutory penalty of \$50. Ms. Lowry seconded the motion. Motion passed (5-0).

7. Request for Waiver of Penalty – Waldoboro Republican Town Committee

Mr. Wayne said the Waldoboro Republican Town Committee (the Committee) made five contributions to candidates in August and September 2016 and was required to file the 11-Day Pre-General Report on October 28th and the January Semiannual Report on January 17th. The 11-Day Pre-General Report and the January Semiannual Report were both filed on February 3rd, 99 days and 17 days late, respectively.

Gordon Webster, treasurer for the Committee, appeared before the Commission. Mr. Webster said he has been the treasurer for the Committee for the past 12-15 years. He said he does not personally receive the postcard reminders but someone on the Committee usually shares them with him.

Ms. Matheson asked if the Committee had ever filed reports with the Commission. Mr. Webster said they had not but they had raised more money than anticipated this year. Ms. Matheson said the recommended penalties seemed commensurate with other similar violations. Mr. Webster said this was his fault and he did not have a problem with the recommended penalties.

Mr. Nass made a motion to find a violation but reduce the statutorily calculated penalty for the 11-Day Pre-General report to \$100 and reduce the statutorily calculated penalty for the January Semiannual Report to \$50. Mr. Lee seconded the motion. Motion passed (5-0).

8. Legislation to Modify Revolving Door Statute for Legislators

Mr. Wayne said this proposal to tighten the statutory language was based on the concerns raised by Rep. Hanington. He said the proposal completely prohibits any lobbying by a former legislator within the first year of leaving office. Mr. Wayne said there is also a parallel provision in 3 M.R.S.A. § 318-A that affects certain high-ranking State employees in the Executive Branch that should also be revised at the same time.

Mr. Nass asked how this could be submitted to the Legislature at this time. Mr. Wayne said there are several legislators who have expressed interest in this matter who could submit this proposal; staff could look into the possibility of a post-deadline submission; or the agency's bill was still pending and he could look into the possibility of amending that bill to include this proposal.

Ms. Lowry said she supported the proposed statute change. Ms. Matheson agreed but said they should add language to specify an effective date to prevent retroactive application of this revision. Ms. Gardiner said this would not take effect until mid- or late September. Ms. Matheson agreed but expressed concern that another complaint could be filed against former Rep. Goode. Ms. Gardiner suggested they could make this revision effective with the convening of the second regular session of the 128th Legislature.

Mr. Pattershall suggested they omit the word “intentionally” from paragraph 3 to remove any doubt about whether or not a violation has occurred. Mr. Pattershall said he believed it would be helpful to add the complaints and investigations section to § 318-A to make it clear that complaints come before the Commission.

Mr. Nass made a motion to support the proposal, as amended, to eliminate the 8-hour exemption of lobbying for former legislators and the corresponding exemption for certain classes of State employees within Title 3, § 318-A. Ms. Matheson seconded the motion. Motion passed (5-0).

Helen Hanlin, a volunteer with the League of Women Voters of Maine, appeared before the Commission. She said this was an important issue with the League and thanked the Commission for their consideration of the proposed changes.

9. Request for Advisory Opinion by Hon. Lisa Keim

Mr. Wayne said Senator Lisa Keim had submitted a request for advisory opinion regarding whether it would be a conflict of interest for her to assist Catalyst Paper Corporation (the Rumford Mill) to locate financial and educational job resources because her husband is an employee of the Rumford Mill.

Mr. Wayne said that, in order to process these requests in a timely manner and not have the legislator wait for the next scheduled Commission meeting or schedule a special Commission meeting, the staff has usually provided a guidance letter, always cautioning the legislator that the Commission may have a different opinion than staff. Mr. Wayne said there are usually only two or three requests each year. He said that due to recent criticisms he had again reviewed the statute and decided it would be best to review this process with the Commissioners.

Ms. Matheson said she believed staff has always handled these requests very well. Mr. Nass agreed and said this is a great service for legislators. He said he did not have a suggestion about how to improve the process other than making sure that the staff's responses to legislators were consistent. He said it was aggravating when the news reports portray these as an Ethics Commission opinion instead of staff advice. Ms. Lowry said it was not necessary for the staff to come to the Commission to confirm the staff's advice. She said she would leave it to the staff's discretion to determine which requests should come to the Commission for an advisory opinion. Ms. Matheson said she had no problem with the staff issuing informal guidance, especially in light of the disclosure that the opinion of the Commissioners may be different. Mr. Lee agreed and said they relied on staff's knowledge and discretion about what should be brought before them.

Ms. Lowry said she supported the opinion as drafted and would continue to rely on staff's discretion on what to bring to the Commission.

Ms. Lowry made a motion to support sending the opinion letter as drafted and to affirm the Commissioners' reliance on staff's discretion to determine how to respond to requests by legislators for advisory opinions, including when to bring them to the Commission for consideration. Mr. Pattershall seconded the motion. Motion passed (5-0).

Mr. Lee made a motion, seconded by Mr. Nass, to adjourn. The motion passed. The meeting adjourned at 2:14 p.m.

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