

Agenda

Item #1



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

Minutes of the December 12, 2006 Meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Hon. Andrew Ketterer, Chair; Hon. Jean Ginn Marvin; Hon. Mavourneen Thompson;
Michael Fridman, Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:06 A.M., Andrew Ketterer convened the meeting and noted that Jean Ginn Marvin had a conflict with regard to Agenda Item #8 and would not be included in the discussion on this agenda item. Item #7 has been withdrawn. The following agenda items were discussed:

Agenda Items #1 and #2 were taken out of order and discussed later.

Agenda Item #3 – Finding of Violation for Commingling MCEA Funds – Rep. Joan Bryant-Deschenes

As a result of the staff audit of Rep. Joan Bryant Deschenes' campaign, the staff determined that Rep. Bryant-Deschenes had commingled campaign and personal funds. At the last meeting, the Commission found Rep. Bryant-Deschenes in violation of the prohibition of commingling campaign finance funds with her personal funds but postponed the consideration of a penalty. Mr. Wayne informed the members that Rep. Bryant-Deschenes was an outgoing member of legislature and had submitted a letter to the Commission asking for reconsideration of its action at the previous commission meeting. The staff recommendation is not to impose a penalty.

Rep. Bryant-Deschenes addressed the Commission. She explained that she misunderstood the statute, which she said was clear. However, the Candidate Guidebook says that candidates are "strongly encouraged" to open separate account and does not "require" separate accounts.

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Mr. Friedman asked what her practice was in past sessions when she ran for the legislature. Rep Bryant Deschenes indicated she did have a separate account during her first run, but because she seldom wrote checks decided she did not need to open a separate account. She further indicated that the Guidebook indicated that it was not mandatory to have separate accounts. She also advised that the Guidebook could be written more clearly so candidates know exactly what is required. The statute indicates one thing and the Guidebook indicates another, therefore, she was unsure which route to take.

Mr. Ketterer asked whether the statute had been changed recently. Mr. Wayne responded that the requirement had existed in statute for a long time but an amendment was made to explicitly require Maine Clean Election Act candidates to have separate campaign accounts.

Mr. Friedman asked Mr. Wayne what the language in the Guidebook was. After a brief discussion, it was agreed that the language should be changed from "strongly encouraged" to "required" if that is what the intent is.

Ms. Ginn Marvin made a motion to assess penalty of \$100, which Mr. Friedman seconded.

Mr. Friedman expressed concern over two things: the perception by public of wrongdoing by commingling funds and the statute requiring it. However, since the Guidebook does not require two separate accounts and statute says it is, the need exists to be sure it is clear what the Commission's intent is with regard to accounting requirements.

Ms. Thompson stated that since the problem was discovered through an audit procedure, we can assume that there are similar problems with other candidates. Because there is a contradiction between what the Guidebook says and what the statute requires, it is more on a mistake on the part of the Commission and the staff than of the candidate. Ms. Thompson said that she would vote against assessing a penalty.

Ms. Ginn Marvin said that the statute was very clear about this.

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The Commission voted 3-1 to impose a \$100 penalty. Ms. Thompson voted against imposing a penalty.

Agenda Item #4 – Finding of Violation for Commingling MCEA Funds – Donald Marean

Mr. Wayne explained that Rep. Marean commingled his legislative compensation check and MCEA funds. Rep. Marean assumed they were related monies and could put them together.

Rep. Marean addressed the Commission. In past runs (2004) he had separate accounts, he started using the account for his legislative pay because it was already set up with automatic direct deposit. When the 2006 MCEA funds started coming in, he had them electronically deposited into this same account without realizing it would be a violation. When the Commission staff advised that he should have separate accounts, he did so the same day.

Ms. Thompson made a motion to assess a \$100 penalty, Mr. Friedman seconded this motion, and the Commission voted 3-1 in favor of the \$100 penalty on Rep. Marean. Ms. Thompson voted against the motion.

Agenda Item #2 – Request for Waiver of Late Filing Penalty – Eagle Lake Democratic Committee

Mr. Wayne outlined the late filing of the Eagle Lake Democratic Committee's report. This report was due by the town party committee by July 15. Mr. Wayne did note that there was a problem getting the reminder notice to the committee treasurer due to a postal issue. The standard formula used for determining late filing penalties would mean a \$500 penalty. Mr. Wayne also noted that even after the Eagle Lake Democratic Committee learned of the late filing deadline in August, they still did not file their report until October.

Mr. Wayne pointed out that not all local party committees reach the \$1,500 annual threshold every year and so filing reports may not be a regular obligation for many local committees. Mr. Ketterer also pointed out the difficulty of getting volunteer treasurers for these small party committees and how frequently these officers change.

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Ms. Thompson inquired as to what past practice has been in this situation. Mr. Wayne indicated that within the past few years, the Commission has been stricter in regard to late filing penalties of party committees. This issue may be a little different since the late notice mailer was not received by the party treasurer.

Senator Martin addressed the Commission via telephone. He expressed concern that the state party committees are not held accountable in some way for neglecting to notify the town party committees of these reporting deadlines. After speaking to the treasurer himself, Senator Martin was told that the treasurer would file the report for the next filing deadline since activity was so minimal. The treasurer was under the impression that this would be acceptable.

Mr. Friedman asked Senator Martin what happened during the last election cycle in 2004 and was told there was never enough activity in their accountings to file.

There being no further comments, Ms. Ginn Marvin moved that the Commission adopt the staff recommendation to impose a penalty of \$500 against the Eagle Lake Democratic Committee. The motion was seconded by Mr. Friedman.

Ms. Ginn Marvin said that the Commission should be consistent with its previous decisions in similar cases.

Mr. Friedman asked Mr. Wayne if the Commission would accept a penalty payment from the state party committee. Mr. Wayne said that it could. Mr. Friedman said that since it was the state party's responsibility to notify the town party committee of this filing report deadline, then it ought to do that. The Commission is not required to notify the committees of these reporting deadlines, but the state parties are.

Senator Martin asked who is responsible for paying the penalty. Mr. Ketterer explained that it was the local party committee's responsibility.

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The Commission voted in favor of the \$500 penalty by vote of 4-0.

The Commission returned to Agenda Item #1.

Agenda Item # 1 – Public Workshop on Leadership PACs and MCEA Qualifying Requirements

Mr. Ketterer informed the group that the purpose of the workshop was to inform and recommend to the Legislature on public policy issues regarding leadership PACs.

Don Bernard from South Portland said that he retired here from Texas and appreciates the openness of Maine government because of the Maine Clean Election Act. Leadership PACs are interfering with this process and undermining the Clean Election process. Running as publicly funded candidate should mean accepting only public funds, no special interest money.

Ms. Thompson asked Mr. Bernard how his opinion affects the right of free speech. Mr. Bernard explained he did not agree that they should be related because then it would be a case where people with the most money would have the most free speech.

Norman Ferguson, former Maine Senator now living in Hanover, addressed the Commission. Mr. Ferguson feels PACs should be eliminated in legislative races because the amount of money raised by legislative leaders in both Democratic and Republican parties, which was over one million and a half dollars in the last election, according to a Lewiston Sun article. Senator Ferguson feels this special interest money creates a sham of the Clean Election process. Too much money is collected by special interests (PACs) and contributed to legislative leaders to enhance their own agendas.

Representative Linda Valentino addressed the Commission. She stated that she formerly served on the Legal and Veterans Affairs Committee during last session and that she has already put in several bills regarding this issue. Rep. Valentino spoke about past bills which did not pass or even come out of committee. After listening to testimony on both sides, she feels strongly that leadership PACs should be funded by the MCEA. She said that her bill would place limits on

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expenditures, which would be on a tier depending upon which leadership office the Legislator is running for, and would place restrictions on how the funds could be used. Specifically, the funds could not be used to support the other candidates for political office. In addition, if a Legislator was running for leadership, that individual would not be able to be involved in another PAC. She feels there needs to be an equal playing field for the leadership PACs. She also thinks that there should be a minimum amount of seed money that Legislators should raise to be eligible.

Ms. Thompson asked what the arguments were against past bills discussed by the LVA. Rep. Valentino responded that mostly the bills were too restrictive according to the committee members. She strongly feels the money amount needs to be something the leadership candidates can work with, if it is too low, the bills will not pass.

Daniel Billings, Esq., addressed the Commission saying that he has been involved in several leadership PACs in the past but that he was expressing his personal opinions. He said that what concerns him are proposals that would appear to make a change, but have no substance in them, e.g., making it illegal for MCEA candidates to participate in fund raising for a PAC, but those same candidates could raise funds for party committees. The result in eliminating leadership PACs is that fundraising is pushed over to party committees, which would also be less transparent than it is currently. Mr. Billings said that by focusing solely on MCEA candidates misses the problem of the involvement of traditionally financed candidates in leadership PACs. Maine has low contribution limits for traditionally funded candidates in order to reduce the influence of contributors. However, those same candidates can accept contributions without any limitation for their leadership PACs. Caucus PACs seem like a good idea for reform. Mr. Billings recommended that the Commission look at whole system, not just leadership PACs. He also recommended that the Commission considered this issue separately from the other proposals dealing with the Maine Clean Election Act.

Mr. Friedman asked what Mr. Billings would change in the system. Mr. Billings responded that he would ban MCEA candidates from raising private money including PACs, party committees, or any political organization. He said that he is concerned that certain changes may actually result in less transparency than there is now. Caucus PACs have less personal control by

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individual candidates and represents group as a whole. Caucus PACs could also be on-going organizations, which could be clearly identified. Currently, leadership PACs come and go and sometimes have names that do not clearly indicate what purpose they serve.

John Bartholomew from Common Cause Maine addressed the Commission. This is not a solely a Clean Elections problem. Mr. Bartholomew pointed out that there have been incremental changes to the campaign finance system that have lessened the influence of money on politics and public policy but the influence has not been eliminated. Yet rather than criticize changes that have been implemented, we should look at the possibilities for new incremental steps to take. Maine is one of the few states without PAC contribution limits. Many other states also limit the types of entities that can contribute to PACs, e.g., some states prohibit corporations or labor unions from contributing to PACs.

Alison Smith, co-chair of Maine Citizens for Clean Elections (MCCE), addressed the Commission. MCCE does not have a position on leaderships PACs but does view PAC reform as the next step in campaign finance reform. The MCEA was successful in removing most of the influence of big money out of candidate campaigns. The contribution limits for privately financed candidates are also successful in limiting the influence of money in candidate campaigns. If change (reform) is necessary, then we need to look at the big picture, not just focus on MCEA candidates. PAC reform needs to be looked at separately. PACs do provide disclosures now, and we should look at solutions that increase accountability.

Mr. Friedman asked Ms. Smith if her group would rather see the focus on larger PAC issue than the leadership PAC issue. Ms. Smith responded that in her opinion the leadership PAC has been framed as a clean election problem. She does not agree. PACs provide an avenue for donations for privately financed candidates as well MCEA candidates. The current system does provide disclosure but does not limit influence.

Mr. Ketterer also noted that a number of e-mails were received from citizens and former candidates on this issue as well.

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Ms. Thompson requested comments from staff.

Mr. Wayne noted two related problems: leadership PACs and caucus PACs. Leadership PACs are smaller and controlled by a single Legislator used to become a leader or remain a leader. Money involved is not as large as the caucus PACs. Proposals for reform could be made regarding leadership PACs and MCEA candidates since there is an inconsistency between MCEA candidates who do not take private money for their campaigns but do have personal PACs raising money on the side. However, there are some costs associated with running for a leadership position and the reforms should be sensitive to that. Speaker Cummings' bill in last legislature allowed candidates to accept limited amounts of money from individuals who are not lobbyists to cover travel and other expenditures that leadership candidates do encounter. So some progress could be made in that area and prohibiting MCEA candidates from having their own leadership PAC could be a precondition for MCEA funds.

Mr. Wayne said that caucus PACs present a larger issue. There are PACs that almost function as caucus PACs: the House Democratic Campaign Committee, the House Republican Fund, Senate Democratic Campaign Committee, and the Maine Senate Republican Victory Fund. There is a great deal of money, contributions, flowing into these PACs from people who have interests before the Legislature. Some of the editorial criticisms are valid. The influence of special interest money has been largely removed from candidate campaigns but it has only moved into leadership and caucus PACs. The Commission might want to think about contribution restrictions to all PACs or to caucus PACs. Under the First Amendment, it is difficult to limit amount PACs spend, but if you feel that the public's perception and confidence in the political process would be benefited, you could recommend contribution limits to restrict the flow of special interest into caucus PACs. The Commission may be in a unique position to make a bipartisan recommendation. The Legislators are accountable to their caucus and may feel constrained in this area.

Mr. Friedman recalled that today's hearing was to get input from the public; no decision by the Commission is required. Mr. Ketterer also reminded the members that any ideas for proposals to the Legislature need to be made within 90 days of the election.

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It was agreed to bring this item back to the table at the next meeting for more discussion after all members have had a chance to review today's public comments.

Agenda Item #5 – Alleged Violation of the Code of Fair Campaign Practices – David

Miramant

Mr. Wayne informed the Commission that David Metz of Rockport brought a complaint to the Commission regarding literature sent by the Miramant campaign. The question is whether the literature is misleading and whether that would be a violation of the Code of Fair Campaign Practices that Mr. Miramant signed. There is a jurisdictional issue since signing the Code is voluntary and since the statute does not authorize the Commission to perform any investigation or impose any fine in violation of the Code.

Mr. Metz addressed the Commission. He said that there were two issues: Does the Commission have the authority to hear the matter and the matter itself. Statement of Fact in the original Bill gives direction for Commission to proceed with investigation and forward findings to the Legislature. Mr. Metz believes the Commission does have jurisdiction with regard to this matter. Mr. Metz contends that the David Miramant flyer mailed out is misleading because of the nature of the roll call referred to in the flyer. The roll call account of Mr. Miramant's general election opponent, Rep. Steve Bowen was not accurate and misleading regarding Rep. Bowen's position on domestic violence and protecting children from lead poisoning. Mr. Metz contends that when candidates sign the Code, they are giving up certain amount of their First Amendment right of free speech and agree to control their speech within the parameters of the Code.

Representative Miramant from Rockland and his counsel, Dan Walker, Esq., addressed the Commission. Mr. Walker addressed the jurisdiction issue. Statute is clear that the Commission does not have jurisdiction on this issue. This is purely a voluntary option on the part of candidates. The complaint procedure that was in the original bill was pulled from the law that was enacted. The study group convened pursuant to the enacted law to study the options for enforcing the Code decided that there were not the resources to institute a complaint procedure and that there would be significant First Amendment issues. Mr. Walker contended that the statements in the mailer about Rep. Bowen's votes and positions were not false.

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Rep. Miramant reviewed the reasons and justification for the mailing along with the accuracy of the information. He received many positive comments as a result of the flyer.

Ms. Gardiner agreed that jurisdiction is the issue here and felt no action was warranted.

Mr. Ketterer expressed concern over the Ethics Commission getting involved in looking over literature printed by candidates. The opportunity to be heard is valid, however, having the Commission make any decisions on these issues is not appropriate.

Mr. Friedman agreed with Mr. Ketterer and thought that the staff was correct in affording the complainant an opportunity to be heard.

Ms. Ginn Marvin moved that the Commission adopt the staff recommendation that there is no jurisdiction in this matter. The motion was seconded by Ms. Thompson and the Commission voted in favor by vote of 4-0.

Agenda Item # 6 – Misreporting of Expenditures Dates – Geoffrey Heckman

Mr. Wayne reviewed that an audit of Geoffrey Heckman's reports found dates that were inaccurate causing him to receive \$200 more in the distribution of MCEA funds for his primary election funds that he would not have received if the dates had been correct. Because he spent all his seed money, he received public money in excess of \$200. Mr. Heckman was a candidate for the House.

Mr. Heckman addressed the Commission. He confirmed that he believed he had to spend all his seed money, he did not read the Guidebook carefully and was relying on what other people told him.

On motion by Ms. Thompson and seconded by Ms. Ginn Marvin it was moved to accept the staff recommendation and impose a violation in the amount of \$200. (4-0)

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(Agenda Item #7 withdrawn, Items 8 & 9 discussed later)

Agenda Item #10 – Ethics Code for Commission Employees

Mr. Wayne advised the Commission members that the Commission, as well as other state agencies, has been urged by the Governor, to adopt a code of ethics and advised the members to adopt.

John Branson, Esq., raised the issue of conflict of interest with regard to the Ethics Commission establishing a code of ethics. Any code of ethics should include a provision to that effect.

Mr. Friedman moved to adopt the Code of Ethics proposed by Mr. Wayne. The motion was seconded by Ms. Thompson. The motion carried by 4-0 vote.

Agenda Item #9 – Proposed Statutory Changes

Mr. Wayne noted that the changes were drafted by the Assistant Director, Paul Lavin. He also informed the group that the changes are posted on the Ethics website. After discussion, it was decided to take testimony from people who have reviewed the changes prior to the meeting.

Senator Bill Diamond addressed the Commission. Senator Diamond feels that there should be more scrutiny of candidates seeking public funding than the law requires currently. He feels the number of qualifying signatures should be increased from 150 and should be restricted to the district the candidate is running in. Public funds should not be used for meals, car maintenance and fuel expenses. Taxpayers do not want their money spent on these kinds of items.

Independent contributions by supporters (for example, a mailing) which the candidate nor treasurer know nothing about are unfair, because the matching funds kick in without the candidate being able to control money spent on their behalf. This could create a loophole that people could take advantage of to get matching funds.

Ms. Thompson asked Senator Diamond for ideas regarding solving the independent contributions issue. Senator Diamond thought having the ability to somehow reject contributions would help this problem.

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Senator Peter Mills addressed the Commission and reviewed his experience as running as House and Senate candidate and a gubernatorial candidate. California and Connecticut have refined the Maine and Arizona Clean Election Law. The draft features a change that removes the \$5 qualifying contributions, which reduces the travel, organization and validating time. Road travel alone is staggering to collect qualifying contributions. Money orders need to be purchased and recorded on each sheet. Senator Mills proposes opening the donation process up to anyone for any amount from \$5 to \$40, so it would combine the seed money process and the qualifying process into one step. The candidate would still have a validation form, and be able to keep the money and work from that amount. He feels the cost of processing the \$5 contributions is disproportionate to the contribution.

Senator Mills believes privately financed candidates should be able to 'shield' themselves if they agree to limit their spending to a certain amount and if their opponent raises more or if there is an independent expenditure for their opponent, the candidate would receive matching funds from the Commission.

Mr. Friedman asked Sen. Mills what he thought about Sen. Diamond's idea that a candidate ought to be able to reject an independent expenditure on their behalf. Because independent expenditures crop up without the candidate knowing about it, the candidate has no control and therefore cannot really set a limit. The party committees are the most aggressive at this, and not always with a favorable result. If the candidate had a 'shield' to limit spending, it would protect the candidate and save money in the long run.

Representative Linda Valentino spoke to the Commission. Rep. Valentino highlighted her concerns with the proposed changes regarding qualifying contribution requirements, seed money contributions, and the need to increase the number of signatures required.

Daniel Billings, Esq., representing the Woodcock for Governor campaign, said that he believed that some of the measures to tighten up the qualifying contributions for gubernatorial candidates would create new problems. Increasing the number of checks or having geographical

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requirements will force candidates to rely on a paid effort to collect the contributions. He said that he strongly disagreed with the requirement of a minimum number of contributions from every county. He also felt the qualifying form should not require the candidate's signature since it does not really signify anything. The candidate is not certifying anything; therefore, should not have to sign. Mr. Billings felt that more importantly, the person circulating the form should be making certain the check is from a personal account and the contributor is a registered voter, etc. He was supportive of the extension of the rebuttable presumption period to 60 days from 21 days.

Representative Gary Knight expressed his concern that there is a negative connotation drawn if a candidate is not running as a "clean" candidate. He suggested changing the name of publicly funded candidates to something other than "clean." Also, he believes non-profit corporations should have dollar restrictions the same as all other PACs and political parties.

Alison Smith of the Maine Citizens for Clean Elections and John Bartholomew of Common Cause Maine addressed the Commission. They endorsed the following ideas: extending rebuttable presumption period before the general election; the ability to revoke certification of a candidate; changing qualifying process by tightening up rules to shore up contributions as a measure of genuine support for the candidate, and with giving the staff more time for process certification requests. Ms. Smith did have reservations regarding the 20 hour rule per party, stating the language change could create a loophole. She also raised concerns over disclosure statements on expenditures.

Mr. Bartholomew cautioned the Commission to move carefully towards changes affecting minimum seed money and geographic distributions.

Mr. Ketterer informed the group that the Commission will be continuing discussion on this item further on January 19.

Discussion took place regarding what order to take up the Agenda Item #8 and an item for executive session. It was suggested that a separate meeting take place for discussion of Agenda

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Item #8, before the regularly scheduled January meeting. Much discussion followed regarding the urgency to get this issue resolved since the original complaint was filed back in October. John Branson, Esq., counsel for Carl Lindemann, requested that Commissioner Jean Ginn Marvin be removed from discussions regarding this agenda item, due to conflict of interest.

John Crasnick, Democracy Maine, also requested this discussion take place before the January 19 meeting due to the fact that if the Maine Heritage Policy Center is found to be required to file a report under §1056B, it must be done before the December 19 filing deadline, so any decision needs to be made prior to that date.

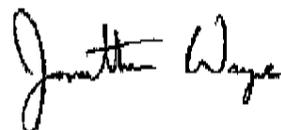
Mr. Wayne pointed out that the public would not be disadvantaged by the filing of a report from Maine Heritage Policy Center later than the December 19th deadline. Under the circumstances, it would be justified for this deadline to be extended.

The Commission decided to hold a special meeting will be held on December 20th for the purpose of discussing Agenda Item #8.

Mr. Friedman moved to go into Executive Session pursuant to Title 1, Section 405, §6 to determine whether to hear a complaint against a Legislator. The motion was seconded by Ms. Ginn Marvin and carried by a unanimous vote (4-0). Mr. Ketterer left the meeting at this point and Ms. Ginn Marvin assumed the chair.

The Commission came out of Executive Session. Mr. Friedman moved that the complaint that was the basis of the Executive Session be dismissed because the Commission lacks jurisdiction to consider the complaint and because, even if the Commission had jurisdiction, it would make a finding that there was no violation of 21-A M.R.S.A. § 1014. Ms. Thompson seconded. The motion carried (3-0).

Respectfully submitted,



Jonathan Wayne, Executive Director



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Minutes of the November 20, 2006 Meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Chair Andrew Ketterer; Hon. Michael P. Friedman; Hon. Jean Ginn Marvin; Hon. A. Mavourneen Thompson. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:07 A.M., Chair Andrew Ketterer convened the meeting. The Commission considered the following items:

Agenda Item #1 – Request for Waiver of Late Filing Penalty/Eagle Lake Democratic Committee

At the request of the Eagle Lake Democratic Committee, the Commission decided to postpone its discussion of this item until the December meeting.

Agenda Item #2 – Request for Waiver of Late Filing Penalty/South Portland Democratic Committee

Mr. Wayne said that the Commission staff sent a notice of the filing deadline to Alan Mills. Mr. Wayne said that any party committee that raises or spends at least \$1,500 in the first six months of a calendar year has to file a finance report in July. Mr. Wayne said that the local committee chair stated that the committee had a fundraiser in October 2005, but was not able to process the credit card payments and had to recollect the contributions. Mr. Wayne said that the committee expected to get the revenues in October 2005, but they did not actually come in until January and February of 2006.

Alan Mills, treasurer of the South Portland Democratic Committee, said that funds in the amount of \$1,050 were raised in 2005 and he thought the funds had been deposited at that time. Mr. Mills said that he thought the committee was well under the \$1,500 filing threshold by June 2006. Mr. Mills said that it was not until he filed the October report that he received notice from the Commission staff that he was required to have filed the January report.

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Mr. Friedman asked if someone assumed that the items from the auction in October 2005 had been paid for in 2005. Mr. Mills said that there was a glitch in the credit card payments. Mr. Friedman asked if it was only a problem with credit card payments. Mr. Mills said he understood that only credit card payments were affected. Mr. Mills said that due to the glitch, the committee chairperson at that time, John Jameson, had to recollect the money. Mr. Mills said that the recollection took place in 2006.

Mr. Friedman asked whether the glitch was with the committee, the bank, or some other entity. Mr. Mills said that it was probably due to miscommunication within the committee. Mr. Friedman asked if there was any question that the money was deposited into the account in 2006. Mr. Mills said that there was no question.

Ms. Ginn Marvin asked if the problem was due to not processing the receipts from the auction. Mr. Mills said that John Jameson was in charge of the auction and not himself. Ms. Ginn Marvin asked if the receipts from the auction were reported in 2005. Mr. Mills said that they were not reported because the committee did not exceed the \$1,500 filing threshold. Mr. Mills said that the \$1,050 did put the committee over the \$1,500 for the period of January through June of 2006.

Ms. Ginn Marvin asked when Mr. Mills first heard from Commission staff. Mr. Mills said that he filed the October report on October 25 and received a phone call from Martha Demeritt the same day asking for the January report. Mr. Mills said that he refiled the January report on October 27 after reviewing the committee's receipts.

Ms. Ginn Marvin said that she was not clear on why the credit card payments were not processed. Mr. Mills said that the credit card system did not process payments made at the auction, but he did not know why.

Ms. Thompson asked if Mr. Mills would have filed a report if the committee collected more than \$1,500 prior to January 2006. Mr. Mills said yes. Mr. Mills said that including the \$1,050 raised from the auction, the committee had \$1,975.15 in total receipts between January and June 2006. Mr. Mills said that without the auction receipts, the committee was well below the \$1,500 filing threshold.

Ms. Thompson asked when the \$1,050 was collected. Mr. Mills said that it was deposited in March 2006.

Ms. Ginn Marvin moved, and Ms. Thompson seconded, that the Commission follow the staff recommendation and assess the statutory penalty of \$500.

Ms. Ginn Marvin said that she did not hear any reasons why the Commission should be lenient. Ms. Ginn Marvin said that the committee had an obligation to file the report on time.

Mr. Friedman said that the committee was responsible for learning the filing requirements. Mr. Friedman said that it was clear that the filing should have occurred when the funds were actually received in 2006, whether or not there was a glitch in the processing of payments in 2005.

Mr. Ketterer said that the Commission had to consider whether the committee's explanation fit the statutory definition of mitigating circumstances. Mr. Ketterer said that \$500 was the maximum penalty for the type of violation being discussed.

The Commission voted unanimously (4-0) to follow the staff recommendation and assess the statutory penalty of \$500.

Mr. Mills said that the committee did not have funds available to pay the fine. Mr. Ketterer recommended that Mr. Mills discuss the payment of the penalty with Commission staff.

Agenda Item #3 – Finding of Violation for Commingling Maine Clean Election Act Funds/Hon. Joan Bryant-Deschenes

Mr. Wayne said that the instance of commingling was a result of the Commission staff's random audits of campaign finance reports. Mr. Wayne said that Rep. Bryant-Deschenes deposited her Maine Clean Election Act funds into a personal bank account. Mr. Wayne said that some candidates commingle funds without being aware that it is illegal. Mr. Wayne said that he recommended that the Commission find the candidate in violation for commingling Maine Clean Election Act funds with personal funds. Mr. Wayne said that it was a legal requirement not to commingle funds, and this requirement encourages good record keeping and good reporting. Mr. Wayne said that there were likely other candidates who commingled funds and were not audited by the Commission staff, so the Commission could decide not to take any action in order to avoid singling out Rep. Bryant-Deschenes.

Ms. Thompson asked how many times Rep. Bryant-Deschenes had run as a Maine Clean Election Act candidate. Mr. Wayne said that the 2006 election was at least her second time running with public funding. Mr. Wayne said that the commingling requirement was included in the candidate guidebook but was not considered a major issue, so it was possible that Rep. Bryant-Deschenes was not aware of it.

Ms. Thompson asked about the purpose of auditing candidates. Mr. Wayne said that auditing provides greater assurance to the legislature and to taxpayers that candidates are held accountable for their use of public funds. Mr. Wayne said that auditing ensures that candidates use public funds for campaign-related purposes. Mr. Wayne said that Rep. Bryant-Deschenes used all of her funds appropriately and filed her reports correctly.

Ms. Thompson asked if Mr. Wayne was aware of other instances of commingling. Mr. Wayne said that the audits revealed two candidates who appear to have commingled funds. Mr. Wayne said that the auditing was random.

Mr. Friedman asked what the range of possible penalties would be.

Mr. Ketterer said there were instances in the past where candidates deposited Clean Election funds in their personal checking accounts and then used the funds for personal expenses. Mr. Ketterer said that it was easier to track expenditures when the funds remained in a separate campaign account. Mr. Ketterer said that the legislature added the commingling requirement to the statute as a result of these and similar problems. Mr. Ketterer said that the commingling requirement appeared in the candidate guidebook.

Mr. Wayne said that commingling was now a violation of the Maine Clean Election Act, and any violation of that act could be subject to a penalty of up to \$10,000. Mr. Wayne said that he sent Rep. Bryant-Deschenes a notice that her commingling of funds would be on the meeting agenda, but none of the materials suggested that there could be a penalty. Mr. Wayne said that it might be appropriate to delay assessing a penalty until the next meeting.

Mr. Ketterer said that he thought there was a criminal law requirement against commingling funds.

Mr. Friedman said that it was a serious violation. Mr. Friedman said that commingling funds makes it much easier to spend Clean Election funds inappropriately. Mr. Friedman said that the Commission should assess a penalty in order to demonstrate that commingling funds is a violation. Mr. Friedman said that the requirement was included in both the statute and the candidate guidebook.

Ms. Thompson said that she could not think of a reason why anyone would not think it appropriate to deposit public funds into a separate bank account. Ms. Thompson said that there should be both a finding of wrongdoing and a penalty. Ms. Thompson said that a penalty should not be assessed before there is a staff recommendation and an opportunity for Rep. Bryant-Deschenes to comment.

Mr. Ketterer said that he thought it was appropriate to find a violation and then make a penalty determination at a future meeting.

Ms. Thompson moved, and Mr. Friedman seconded, that the Commission find Rep. Bryant-Deschenes in violation of the Maine Clean Election Act with consideration of a penalty assessment to be made at the next meeting.

Ms. Ginn Marvin said that the fact that the commingling was discovered as the result of a random audit, with other potential instances of commingling not known, was not a sufficient reason to avoid making a finding of violation.

The Commission voted unanimously (4-0) to find Rep. Bryant-Deschenes in violation of the Maine Clean Election Act with consideration of a penalty assessment to be made at the next meeting.

Agenda Item #4 – Report of Audit Findings

Vincent Dinan said that there were eight audit reports included in the meeting materials. Mr. Dinan said that seven were without exceptions and one was the commingling issue considered in agenda item #3. Mr. Dinan said that the staff had completed 18 audits and had 9 in progress. Mr. Dinan said that most audits resulted in a finding of no exceptions.

Mr. Friedman asked if 2 out of 18 completed audits contained a finding of commingled funds. Mr. Dinan said yes, and that there were no indications that any audits in progress contained evidence of commingled funds. Mr. Friedman said that if the numbers were extrapolated, it could indicate a serious problem.

Mr. Dinan said that the commingling requirement existed in the statute for some time, but the change that went into effect in April 2006 required candidates to both maintain a separate bank account and to avoid commingling funds.

Ms. Thompson asked if the audits were used to alert staff to serious issues and possible changes. Mr. Dinan said that he communicated with staff if the audits uncovered evidence of widespread problems. Mr. Dinan provided the example of travel reimbursements that did not comply with the Commission's rules. Mr. Dinan said that the staff then sent out advisory notices to the candidates.

Ms. Thompson asked how an audit identified issues that the normal staff review would not uncover. Mr. Dinan said that the audits check to see whether the source documentation, such as vendor invoices, bank statements, and canceled checks, supports the candidate's reported expenditures. Mr. Dinan said that for the most part, candidates have been very cooperative in providing the source documentation requested by the Commission staff.

Ms. Ginn Marvin asked if the gubernatorial campaigns were also being audited. Mr. Dinan said that there would eventually be on-site audits of all gubernatorial campaigns.

Ms. Ginn Marvin said that it might be useful if the Commission staff released the results of the gubernatorial audits to the public. Ms. Ginn Marvin said that many members of the public were suspicious about how the gubernatorial campaigns were using Clean Election funds.

Mr. Ketterer said that it was difficult to determine how frequently the commingling of funds occurred based on the information available. Mr. Ketterer said that the auditing process increased accountability.

Agenda Item #5 – Proposed Statutory Changes

Mr. Ketterer mentioned an article on Clean Election loopholes in the fall 2006 *Maine Bar Journal*. Mr. Friedman said that the article included information on Clean Election candidates setting up private political action committees.

Mr. Wayne said that the staff would like to present some of the more complex recommendations at the Commission's December 12 meeting. Mr. Wayne said that one of those recommendations will relate to the Clean Election qualification of gubernatorial candidates.

Mr. Wayne said that candidates were allowed to form leadership PACs and participate in their legislative caucus PACs. Mr. Wayne said that none of the proposed changes made in 2005 were adopted, although there may be more proposals in 2006. Mr. Wayne said that the Commission may want to allow the legislature to resolve the issue without having any specific recommendations from the Commission.

Ms. Thompson asked what problems were associated with leadership PACs. Mr. Wayne said that some see a conflict between the agreement as a Maine Clean Election Act candidate not to accept private campaign contributions and the raising of private contributions by Clean Election candidates through PACs.

Mr. Wayne said that there were costs associated with running for a leadership position.

Ms. Gardiner said that the leadership PACs may also contribute the money they raise to privately financed candidates.

Mr. Wayne said that placing restrictions on Clean Election candidates that wish to form leadership PACs may create a disadvantage for Clean Election candidates who then run for leadership positions in the legislature.

Mr. Friedman asked if there was a difference between private PACs and leadership PACs. Mr. Wayne said that most candidates who form PACs call them leadership PACs, but in either case the money raised by the PAC can be used the same way.

Mr. Wayne said that Clean Election candidates could not use money raised by leadership PACs toward their own campaigns for the legislature.

Mr. Ketterer said that the Commission could express its concern about a particular issue without making specific recommendations. Mr. Ketterer said that the Commission should not just ignore an issue and hope the legislature does something about it.

Ms. Thompson said that the Commission should make recommendations for legislation whether or not the legislature is likely to adopt it.

Mr. Friedman said that it may be difficult to draft proposed legislation with a chance of being passed due to the fact that legislators have such a stake in the outcome.

Ms. Ginn Marvin said that the Commission should show leadership on the issue and be aware that it may face criticism from the public if it takes no action.

Alison Smith, member of Maine Citizens for Clean Elections, said that contribution limits should also be considered when discussing leadership PACs. Ms. Smith said that privately or publicly financed candidates could set up PACs to go around the contribution limits. Ms. Smith said that some candidates use their leadership PACs to raise money for the party caucuses. Ms. Smith said that contribution limits on candidate PACs may be a solution.

Ms. Thompson asked if there could be a public workshop on leadership PACs. Mr. Ketterer said that the Commission was required to have a workshop on proposed rule changes but not statutory changes.

Mr. Wayne said that the Commission staff had reached out to interested parties. Ms. Thompson said that those communications did not include members of the general public who may be interested in commenting.

Mr. Ketterer asked what the deadline was to submit proposed statute changes. Mr. Wayne said that the Commission could submit a bill up until 90 days after the election.

Mr. Friedman said that the Commission staff should reach out to not only leaders from the major parties, but also groups like Maine Citizens for Clean Elections.

Mr. Ketterer said that the Commission could post a public notice and invite members of the public to communicate with the Commission by e-mail or other means.

Ms. Thompson said that the Commission members should participate in any discussion of rule or statute changes.

Ms. Ginn Marvin said that she was not aware of anyone complaining that the Commission was not open to input from the public.

Ms. Thompson recommended that part of the next Commission meeting be devoted to a public workshop on leadership PACs.

Mr. Friedman said that the Commission should rely on staff to know who would have an interest in commenting on a particular issue and notify those parties about the opportunity to comment at a Commission meeting.

Ms. Thompson asked Mr. Friedman if he agreed with her proposal for a public workshop. Mr. Friedman said that he would support a workshop if input from interested parties was not sufficient.

Ms. Thompson said that statutory recommendations on leadership PACs could result in substantial changes. Ms. Thompson said that the Commission was responsible for representing the public with any proposed changes.

Ms. Gardiner said that people were more likely to send a written communication than come to Augusta for a Commission meeting.

Ms. Thompson said that holding a hearing demonstrates the Commission's transparency and openness to comments.

Mr. Wayne suggested that a public workshop on leadership PACs be held at the December 12 meeting. Mr. Wayne said that the staff would send out an e-mail to all candidates, PACs, lobbyists, and party committees informing them of the workshop and the option of sending written comments.

Mr. Wayne said that many people were concerned about the costs of publicly financing gubernatorial campaigns. Mr. Wayne asked if the Commission would prefer to hold a public workshop on that issue or hear recommendations from staff.

Ms. Thompson said that she agreed with Jonathan's suggestions about holding public workshops on leadership PACs and gubernatorial Clean Elections qualification.

The Commission members and staff agreed to discuss both items as part of a single workshop during the December 12 meeting.

Mr. Friedman asked Mr. Wayne if his notice to interested groups was extensive enough. Mr. Wayne said that he would also send a written notice to party leadership. Mr. Ketterer suggested putting out a press release.

Mr. Wayne said that a proposed statutory change would allow radio advertisements financed by a candidate to omit the candidate's address.

Mr. Wayne said that a proposed change would expand the 21-day presumption period for independent expenditures to 60 days. Mr. Wayne said that a paid-for disclosure would not be required if the communication was not made for the purpose of influencing the candidate's election.

Mr. Wayne said that a proposed change would only require live phone calls to mention who paid for the call, with surveys and research polls being excluded from the disclosure requirement.

Ms. Ginn Marvin asked what the disclosure requirement would be if the caller was a volunteer. Mr. Wayne said that there may not be a need for a disclosure statement if no expenditure was made. Ms. Gardiner said that the requirement to disclose who paid for a phone call was consistent with the disclosure requirement for written materials.

Mr. Wayne said that under current law, a volunteer would not have to state who was making the call.

Mr. Wayne said that a proposed change would apply contribution limits to sole proprietorships in the same way it is applied to multiple businesses with the same owner.

Mr. Wayne said that a proposed change would eliminate the requirement for replacement candidates to file a replacement candidate report 15 days after they are appointed. Mr. Wayne said that the requirement is no longer necessary since most replacement candidates submit seed money reports. Mr. Wayne said that privately financed replacement candidates would not have to file a report until 6 days before the election.

Ms. Thompson asked about the removal of the disclosure requirement for communications that were not made for the purpose of influencing an election. Ms. Thompson asked how the change was connected with the Commission's discussion of how to define express advocacy. Ms. Gardiner said that the proposed change would require a disclosure statement on any communication that depicts a clearly identified candidate, so there is an exception for communications depicting a candidate that are not election-related.

Alison Smith said that a 60-day presumption period before the general election would be reasonable, but that 60 days before a primary election would be too long. Ms. Smith asked if voter guides and similar mailings were required to contain disclosure statements. Mr. Wayne said that the disclosure was not required in these cases, although some groups include disclosure statements voluntarily.

Ms. Smith said that the rebuttable presumption could be used if a communication was not campaign-related. Mr. Friedman said that the group paying for an ad may not be familiar with the rebuttable presumption requirements.

Mr. Wayne recommended that the staff consider the issue further and then present its views at the December 12 meeting.

Mr. Wayne said that a proposed change would increase the 21-day presumption period before a general election to a 60-day period. Mr. Wayne said that it would be presumed that a communication made within the presumption period that named or depicted a clearly identified candidate in a race involving a Maine Clean Election Act candidate was intended to influence the election unless the party making the expenditure filed a statement of rebuttable presumption.

Mr. Wayne said that a 60-day presumption period before the primary election could be problematic due to its closeness to the end of the legislative session. Mr. Wayne said that legislators may wish to send constituent communications during this time. Mr. Wayne recommended a 30-day presumption period before the primary election. Mr. Wayne said that the change could increase the amount of matching funds distributed and result in independent expenditures being made earlier.

Mr. Ketterer said that he supported increasing the presumption period to 60 days before the general election.

Mr. Friedman asked how the staff arrived at the 60-day proposal. Mr. Wayne said that the end of September and the beginning of October tend to be when outside groups begin to try to influence the election. Mr. Wayne said that the 60-day period mirrors a federal law applying to Congressional candidates.

Mr. Wayne said that a proposed change would reduce from 5 to 3 the number of notices that must be sent to a candidate who has not filed a campaign finance report before the Commission could refer that candidate to the attorney general. Mr. Wayne said that the 5-notice requirement was the result of a compromise in a previous bill before the legislature.

Newell Augur, appearing on behalf of the Senate Democratic Campaign Committee, said that people generally realize that communications sent out close to the election could be construed as

campaign-related. Mr. Augur said that there was still a question of what constitutes express advocacy, which is not addressed by extending the presumption period to 60 days before the election.

Mr. Wayne said that a proposed change would make the statute consistent in setting a \$1,500 threshold of contributions or expenditures requiring an organization to register as a PAC.

Mr. Wayne said that a proposed change would require PACs to keep invoices but not cancelled checks. Mr. Wayne said that Dan Billings commented that the requirement to keep an invoice or receipt should only apply to expenditures made with the intent of influencing an election. Mr. Wayne said that he had not yet discussed the proposal with the staff auditor. Mr. Ketterer recommended discussing the matter again at the December 12 meeting.

Mr. Wayne said that a proposed change would give the Commission the ability to deny or revoke the certification of candidates to receive Maine Clean Election Act funds. Mr. Wayne said that the proposal would prevent certification in the event that a candidate made a material false statement in a report or other document submitted to the Commission. Mr. Wayne said that if a candidate had a prior request for certification revoked for reasons of fraud or a substantial violation, the Commission could deny a subsequent request for certification. Mr. Wayne said that the proposal would give candidates with outstanding penalties who applied for Maine Clean Election Act certification 10 business days to pay the penalty. Mr. Wayne said that the proposal would give the Commission staff additional time to investigate those provisions if the candidate is notified. Mr. Wayne said that the proposal also allows for certification to be revoked after the fact.

Ms. Thompson asked about the definition of a material false statement. Ms. Gardiner said that a material false statement would have to be relevant to the criteria needed to qualify for public funding.

Mr. Wayne said that the prevention of certification due to past instances of fraud could be seen as controversial. Mr. Ketterer said that only major violations would prevent a candidate from being certified in a future election.

Mr. Friedman asked if an automatic disqualification would result. Mr. Ketterer said that the Commission would have discretion over each case.

Ms. Gardiner said that the Commission may want to limit the time a candidate requesting certification is given to pay an outstanding penalty to 3 business days rather than 10 as originally proposed.

Mr. Wayne said that a proposed change would allow for revoking the certification of candidates who misrepresented to contributors the purpose of collecting \$5 qualifying contributions. Mr.

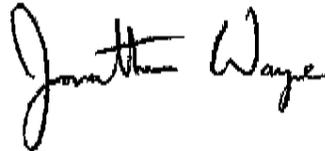
Wayne said that other reasons for revocation would include failing to comply with seed money restrictions, spending or raising private funds for the campaign, making false statements or material misrepresentations, or otherwise substantially violating the Commission's laws and rules.

Mr. Wayne said that a proposed change would allow the Commission staff to investigate lobbyists.

Mr. Ketterer said that the proposal was a good idea. Mr. Ketterer said that the legislature was sometimes reluctant to give subpoena power.

The Commission decided on the 19th as the tentative date of its January meeting.

Respectfully submitted,

A handwritten signature in black ink that reads "Jonathan Wayne". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Jonathan Wayne
Executive Director