

Agenda

Item #1



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

Minutes of the August 13, 2007 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: Michael Friedman, Esq., Chair; Hon. Jean Ginn Marvin; Hon. Vinton Cassidy; Hon. Mavourneen Thompson; Hon. David Shiah. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:06 A.M., Chair Michael Friedman convened the meeting.

The Commission considered the following items:

Agenda Item #1 Ratification of Minutes: July 16, 2007 Meetings

Ms. Ginn Marvin moved, and Ms. Thompson seconded, that the Commission ratify the minutes of the July 16 meeting as amended. The motion passed by a vote of 5-0 .

Agenda Item #2 Request for Waiver of Late-Filing Penalty/House Republican Fund PAC

Mr. Wayne explained that an error contained in a reminder e-mail regarding PAC reporting deadlines sent by Commission staff, stating the deadline fell on a Tuesday, when it was in fact a Monday, contributed to this late filing. The staff recommends granting a waiver of the penalty because of the error by Commission staff.

Ms. Ginn Marvin moved to accept the staff recommendation for a waiver, the motion was seconded by Ms. Thompson. The motion passed (5-0).

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Agenda Item # 3 Audit Findings/Hon. Philip A. Cressey

Mr. Wayne reminded the members that Mr. Cressey did attend the May meeting and was asked to report back with more information since he was unable to produce documentation of an expenditure of \$517.63 to Staples for printing and cardstock. Rep. Cressey also neglected to sell a flash drive he purchased for \$62.50. Mr. Wayne reported that Rep. Cressey could not attend today's meeting due to a change in jobs but he did provide an e-mail explaining that he lost the receipt from Staples. Mr. Wayne said Mr. Cressey's figures provided do add up to what he stated he ordered from Staples. Mr. Wayne said the staff recommendation is to find him in violation for not keeping the correct documentation, but not assess a penalty.

The other issue is the flash drive. Rep. Cressey claimed he did not realize that the flash drive reusable, so he threw it out. The rule states that electronic equipment must be sold at fair market value after the election and the funds returned to the MCEA fund. Mr. Wayne believes Rep. Cressey most likely is telling the truth that he did not realize that this piece of equipment could be reused. Mr. Wayne stated the staff recommendation would include finding in violation for not complying with the Commission rule to sell equipment at fair market value

Mr. Cassidy moved to accept both of the staff recommendations; Mr. Shiah seconded the motion. The motion passed (5-0).

In consideration of the Commission's practice of addressing agenda items out of order to accommodate the attendance of public participants regarding particular items, the Commission took Agenda Items 4, 5, and 6 out of order and discussed Agenda Item 7 at this time.

Agenda Item #4 Audit Finding/Hon. Glenn Cummings

Mr. Wayne explained that the random audit of Rep. Cummings campaign disclosed that a reimbursement to himself of \$335 for postage was actually a reimbursement for three smaller expenditures for postage, envelopes, and a sign stencil. The expenditure for the sign stencil was further complicated by the fact that the vendor never made the stencil or cashed the campaign's check. The staff recommendation is to find the campaign in violation for not reporting the three expenditures as separate payees and amounts and also return the \$130 for the sign stencil to the

MCEA. Mr. Wayne explained that due to the minor nature of the violation, the staff recommends no penalty.

Daniel Walker, Esq., approached the Commission and explained how this discrepancy happened. Rep. Cummings went back to the bank and requested supporting documentation for reimbursement. Mr. Walker provided the \$130 check for reimbursement to the Clean Election fund.

Ms. Ginn Marvin made a motion to accept the staff recommendation of a finding of violation for not report three expenditures with no penalty because of the minor nature of the violation and accept the \$130 check; the motion was seconded by Mr. Shiah.

Ms. Ginn Marvin expressed appreciation for the Speaker Cummings' honesty and upfront dealings in responding to all investigation requests.

Motion passed (5-0).

Agenda Item #5 Audit Findings/Hon. Chandler E. Woodcock

Mr. Wayne explained that Chandler E. Woodcock received \$1,303,727 in MCEA funds for his 2006 gubernatorial campaign. The campaign was very compliant, but the audit disclosed three minor findings. The first two findings deal with money orders. The campaign cannot account for how 90 money orders, which were not used for qualifying contributions, were actually used. The campaign did not report the expenditure of about \$300 during the qualifying period for money orders. In the third finding, the staff questions whether the campaign obtained fair market value from the sale of computer and electronic equipment. Mr. Wayne said the staff recommends the Commission find the campaign in violation and assess a \$100 penalty for not accurately reporting money order transaction fees and consider whether the campaign complied with selling equipment at fair market value.

Vincent Dinan addressed the Commission. He explained that all gubernatorial campaigns have been experiencing difficulty in reporting and accounting for money order purchases. This was the case with the Woodcock campaign and two of the findings pertained to money order issues.

The third violation regards the resale of equipment purchased by the campaign. Mr. Dinan stated that the rules require the candidate to sell equipment within 42 days of the election at fair market value. The problem is how the fair market value is determined. He recognized that determining fair market value and sale of equipment is difficult and time consuming for candidates. Mr. Dinan thought that six-month old equipment should generate more than 25% of the purchase price, which is the percentage of the purchase price that the Woodcock campaign received. Mr. Dinan recognized that the original quality of the equipment is a factor in the resale amount. He also noted that other candidates generally garner approximately 40% of the original price paid. Mr. Dinan explained that sometimes the campaign workers, candidates themselves or relatives of candidates are usually the purchasers of this used equipment.

Daniel Billings, Esq., counsel for the Woodcock campaign, approached the Commission and explained that the purchase of money orders occurred during the early days of the campaign and records were not kept very accurately and tracking them was not paramount in the minds of the volunteers. He has no issue with the findings regarding the money orders. Mr. Billings did want to point out that the poor accounting did not pertain to the public funds that were entrusted with the Woodcock campaign, only seed money was involved.

Mr. Billings noted the amount of funds regarding the equipment purchase were a small part of the campaign money that was awarded to the campaign. Mr. Billings explained that the campaign purchased equipment that was very inexpensive, cheap, bottom of the line computers to save money. He said that knowing the equipment would not have to last very long, they did not make a large investment on quality systems; therefore, the resale was less than what higher quality systems would bring back to the fund. Mr. Billings said the equipment was not purchased with the idea that anyone would want it after the campaign. He also wondered about leasing equipment for future election years.

Chris Jackson, Woodcock campaign manager, addressed the Commission. Mr. Jackson explained that he and Scott Pratt, the campaign treasurer, had spent a great deal of time on researching resale figures for this equipment. He said he was able to get 50% for the lap top, but he had to have it worked on at Capitol Computers and spent \$150 because of a virus that had disabled the system. The rest of the equipment was such low quality he was only able to get minimum return from someone that worked on the campaign.

Mr. Jackson mentioned the possibility of selling the equipment through State Surplus and then having the money returned to the MCEA. He thought this seemed like a much smoother process for getting money back into the MCEA fund, since Surplus does this on a regular basis.

Ms. Ginn Marvin thought that selling the used equipment through the State Surplus Division was a good idea. Mr. Dinan said it would be a donation in that case, and that process is not set up currently.

Mr. Billings advised the Commission of the time-consuming process the resale of equipment entails.

Carl Lindemann approached the Commission. He questioned whether the Commission wants the campaigns in the resale business. He feels the State of Maine owns the equipment and should have a public sale after the elections. Many private business and citizens would take advantage of getting lightly used equipment for low prices. He also brought up the conflict of interest issue, if candidates are selling this equipment to relatives.

Ms. Ginn Marvin stated that the Commission is hearing these same issues over again, she would like the Commission to come up with a new mechanism to deal with money orders and fair market values for resale of equipment. She made a motion to accept the staff recommendation to find the campaign in violation for money order transaction fees and assess a \$100 penalty; Mr. Shiah seconded the motion.

Mr. Friedman stated that he would like to see the State accept donations of this equipment and have them donated to charity or non-profit organizations. He also stated that the resale amounts for the Woodcock campaign are very close to the recommended resale amount of 40%, so not that much of a discrepancy.

The motion passed (5-0).

Agenda Item #6 Audit Findings/David Feeney

Mr. Wayne explained that this was Mr. Feeney's first campaign. Mr. Feeney deposited his MCEA payments into a bank account with personal funds and he used MCEA funds for short term personal expenditures. Mr. Wayne pointed out that Mr. Feeney did return all the money and there is no evidence that Mr. Feeney ever intended to keep these public funds. He also said Mr. Feeney has submitted a written apology to the Commission and accepts full responsibility. Mr. Wayne said the staff recommendation in this case would be two findings of violation, one for commingling funds (\$250) and one for using MCEA funds for personal expenses (\$600) for a total penalty of \$850. Mr. Wayne handed out a previous penalty assessment comparison sheet for the Commission members' information.

Mr. David Feeney addressed the Commission saying that he came today to say he was sorry and would like to pay his penalty and put the issue behind him. He has no issue with the amount of the penalty.

Discussion took place regarding how the amount of Mr. Feeney's penalty was established.

Ms. Ginn Marvin stated that she feels this situation is different from the Senator Perry penalty since he was a six-term candidate who knew the rules of the MCEA, so Mr. Feeney's penalty should be half of what Senator Perry's assessed penalty.

Ms. Thompson said she believes the recommended assessment is fair. She further stated that commingling of funds is wrong no matter how great or small the amount of money. The Commission should not create discrepancies in penalties regarding this issue.

Ms. Thompson made a motion to accept the staff recommendation of assessing an \$850 penalty, which was seconded by Mr. Shiah. The motion passed (3-2 with Mr. Cassidy and Ms. Ginn Marvin opposing).

Agenda Item #7 Request for Waiver of Late-Filing Penalty/Lobbyist Sebastian Belle

Mr. Wayne explained that Sebastian Belle is a lobbyist for the Maine Aquaculture Association. He filed his monthly lobbyist report two days late and Mr. Belle requests a waiver of the preliminary penalty of \$100 because of his good filing record. Mr. Wayne said that in 2004, the Commission did away with reductions in penalties, so the staff recommendation is to find in violation and assess a penalty of \$100.

Ms. Thompson moved to accept the staff recommendation of assessing a \$100 penalty; the motion was seconded by Ms. Ginn Marvin. The motion passed (5-0).

Agenda Item #8 Consideration of Legislation re: Payments of MCEA Funds to Family Members

Mr. Wayne explained that this is a follow up to last month's discussion regarding paying family members for services provided to campaigns, which came about largely due to the payments to a family member in the Merrill gubernatorial campaign. The staff has had concerns regarding appearance issues when payments to family members involve significant amounts of public funds. The Commission proposed to the Legislature in a bill this past session to prohibit MCEA funds being paid to family members. This proposal was rejected by the Legal and Veterans Affairs Committee. The oversight committee did not know about the Merrill campaign matter at the time of the discussions.

Mr. Wayne said there were three ideas the Commission could propose to the Legislature for consideration in the next session:

1. The Commission could renew its original proposal to the Legislature to prohibit the use of public funds to pay family members for campaign services.
2. The Commission could propose a cap on payments to family members. The Commission could decide on an appropriate amount, for example, a House candidate could pay up to \$250 to family members, Senate up to \$500, and gubernatorial candidates \$3,000. The options would give candidates some flexibility.
3. The Commission could propose no restrictions but require better disclosure on campaign finance reports. The statute could require the family relationship be disclosed on the expenditure schedule of the candidates' finance report.

Ms. Thompson asked whether there had been any feedback from the last meeting on this issue including feedback from Legislators or legislative leadership. Mr. Wayne indicated that several editorials had been written regarding the appearance of the Merrill campaign, but nothing from individuals or from the Legislature.

Mr. Cassidy stated that disclosure is the most important thing. There may be legitimate reasons why a candidate may use a family member, for example, hiring a child to distribute flyers. He said that he favors the third option. He said that people are not likely to get excited if the amount paid to a family member is small. If the amount is large and it is disclosed, the public could decide how that affected their view of the candidate.

Ms. Thompson would support proposing the prohibition of paying family members to the Legislature again. She felt the Legislature should be the one to mitigate or alter any proposal that the Commission submits.

Ms. Ginn Marvin asked what advice the Commission has given out in the past to David Emery regarding hiring his own consulting firm. Mr. Wayne said the Commission cautioned him to view this as a sensitive area.

Mr. Friedman questioned whether there has been enough feedback from the general public. He said that he was hesitant to support a complete prohibition. There are candidates with family

members who have been brought up in the political arena and have the expertise to provide services but cannot give up their jobs to work on campaigns. Mr. Friedman acknowledged the importance of appearance impropriety when you are in the public eye, particularly when public funds are involved.

Discussion followed regarding getting public input on this issue and how to go about obtaining public comments. Mr. Friedman suggested that there be series of meetings at which the public can comment. Mr. Shiah agreed with the need for more discussion. Mr. Cassidy said that the Legislative oversight committee will hold public hearings on anything that the Commission proposed in a bill.

It was generally felt that the Legislature has a better arena for public hearings and comments. It was suggested that a proposal should be submitted to the Legislature and let them take it from there. The Commission's role should be providing a proposal and then let the Legislature have the hearing and get public input since the response would be better through the legislative process.

Alison Smith, co-chair of Maine Citizens for Clean Elections, approached the Commission. She reminded the members that the public hearing phase had been done previously when this was part of the bill submitted during the last session. She stated that the range of comments during the public hearing phase were very widespread for support and against prohibition. She said that there were a lot of opinions but no consensus on the issue.

Ms. Smith stated that the MCCE would not support an outright prohibition or limiting the amount that could be paid for services from family members. There should be flexibility for candidates to be able to hire a family member if that person has the appropriate qualifications. MCCE does favor disclosure. She thought that the issue of paying family members may be a red herring and that the focus should be on whether the amount paid is consistent with what the person usually gets for those services and whether the person is qualified to provide those services. She felt the Commission has the right to ask questions of candidates in exercising the Commission's due diligence to protect Clean Election funds and can use the auditing process to

do so. It is the Commission's role to investigate and ask in-depth questions when there are questionable expenditures. The Merrill campaign issue was an example of the process that takes place and that it is working. It is the Commission's discretion to provide safe guards of how public money is being spent.

Ms. Thompson stated she is concerned that public disclosure may have a negative affect on the MCEA and believes prohibition of payments to family members is necessary.

Ms. Smith stated that the Clean Election Act can withstand public disclosure. Disclosure is healthy and is important information before an election. This process helps the public obtain information about candidates. If issues come up like the Merrill campaign, it is up to the Commission to take action if the abuse of funds is the issue. She feels the public is fine with paying family members, it is the amount of money that was paid and possible abuse. The citizens of Maine count on the Ethics Commission to make sure funds are being used for their intended purpose, not for personal enrichment. She said that the Commission also should limit the issue to family members but should look at other relationships which could be a factor in the misuse of public funds.

Mr. Friedman asked Ms. Smith if her position was that even if there had been full disclosure in the Merrill campaign, the issue was the amount Phil Merrill was paid regardless of the quality of services he provided. Ms. Smith said that she did not have enough information to make a determination of whether the amount paid was commensurate with the services provided. Ms. Smith stated that the Commission could have asked more questions of the Merrill campaign regarding whether the amount was appropriate for the services provided, instead of the Commission ending at a statement that paying family members is legal under the law.

Mr. Friedman stated that the Commission has to act within the bounds of the statutes that govern the Ethics Commission. He stated his concern with the Commission going beyond the bounds of the statutes.

Ms. Smith also said that she was concerned that by forcing family members to essentially volunteer their services, MCEA candidates would be accepting impermissible in-kind contributions.

Mr. Carl Lindemann, the founder of TrueDialog.org, approached the Commission. He posed the question of whether the Merrill campaign was an authentic campaign, i.e., a campaign that was 100% dedicated to the election of the candidate, or was is a money-maker for some individuals associated with the campaign. Mr. Lindemann discussed in general terms the Commission's mandate to protect the integrity of the Clean Election Fund and to adopt procedures to do so.

Ms. Ginn Marvin moved that the Commission accept staff recommendation #3 which was to require full disclosure of the type of relationship and send that as well as the other two options back to the Legal and Veterans Affairs Committee for their discussion and recommendation. Mr. Cassidy seconded the motion.

Ms. Thompson asked if this motion would preclude public discussion. Ms. Ginn Marvin stated that the Legislature would have a better public arena for public comments. Ms. Thompson said this motion would exclude the other two options. She said that she was in favor of starting with the strongest position, which was for a complete prohibition. She supports disclosure at the very least but she will vote against the motion because she would prefer a stronger stand.

Mr. Shiah said that he would like to hear more from the public before drafting proposed legislation. He agrees with Ms. Ginn Marvin that the Legislature is a better forum for public comment but thinks that by getting more feedback at the outset, it may be possible to draft legislation with stronger language. He said that he was reluctant to vote on the motion at this time and would prefer tabling the motion until there has been an opportunity to receive more public comments.

Mr. Cassidy restated that disclosure is the key issue and will have the biggest effect on future campaigns. He thinks that the discussion itself will have an impact. Disclosure will discourage candidates from engaging in misconduct.

Mr. Friedman stressed the importance of public input; however, that does not need to happen here at the Commission. When the Commission has solicited comments in the past, the response has been minimal. The Legislature will have access to a larger and more interested public. He said that he was inclined to support the motion.

Mr. Wayne clarified that the Commission this decision by the Commission regarding the disclosure of family relationships would be presented to the Legal and Veterans Affairs Committee in a bill. He also said that the Committee would be made aware of the other options (payment limits and outright prohibition) through written and oral testimony. Mr. Friedman reiterated that the motion on the table dealt with the disclosure option.

The motion passed by a vote of 4 to 1, with Ms. Thompson opposing.

Agenda Item #9 Request for Appropriation for Maine Clean Election Fund

Mr. Wayne stated that the staff has done an analysis and has determined that there is not enough money in the fund for the 2010 elections and recommends that the Commission request two transfers from the General Fund to the Maine Clean Election Fund in 2010 to finance the Maine Clean Election Act program in the 2010 elections.

He explained the sources of revenue for the MCEA fund. Mr. Wayne said the largest source is a \$2 million transferred every year from the General fund to MCEA, which is a special revenue fund, and the other major income is the taxpayers check off which generates approximately \$200,000/year plus other smaller sources. Mr. Wayne said a total of approximately \$5,200,000 will be needed. He is recommending a \$2.8 million transfer from the General fund no later than June 1, 2010, and another \$2.4 million transfer by August 1, 2010, which would fall in the subsequent fiscal year. He said the Legislature needs to make a decision in the next session in 2008, even though a transfer will not happen until 2010. He said gubernatorial candidates need to know whether public funds will be there before May of 2009, in order for them to run public funding campaigns.

Mr. Cassidy raised the issue whether this current Legislature could make a commitment for a future expenditure. He believes this Legislature would have to transfer the money now, since legally this Legislature cannot bind a future Legislature to make the transfer.

Ms. Ginn Marvin agreed that this Legislature should be asked to get the conversation moving. The money belongs to the MCEA fund and needs to be returned to that fund.

Mr. Wayne gave further background information. He said initially in 2002-2003, \$6.7 million was taken out to be used for other purposes, with as much as a little over \$8 million deappropriated. Mr. Wayne also requested members of the Commission attend a couple of the appropriation meetings in order to make the request stronger. He also believes the Commission should ask the Governor to make it part of his 2008 supplemental budget.

Alison Smith, of Maine Citizens for Clean Elections, addressed the Commission and expressed her views on the Legislature's deappropriation of the MCEA funds. She supports the recommended dollar amounts for the 2010 elections and feels the Commission should be protective of Clean Election funds. She also expressed concern over new legislators not understanding what the MCEA law established in 1996 actually states. She said some legislators are not aware of the deappropriations that have been happening. The funding mechanism that was established back in 1996 works, in her opinion, if funds were left alone to collect interest as it was intended to do. Ms. Smith expressed her frustration over the Legislature 'borrowing' these public funds that were appropriated for the Clean Election fund. She said the public needs to know that the cost of the program is not the reason for the money not being there, it is because the Legislature has deappropriated the funds in the past.

Ms. Thompson made a motion to that the Commission direct the staff to use the recommended actions itemized on page 3 of Mr. Wayne's memo to the extent necessary so that the goal of gaining the funding needed for 2010 election is met, using the four different suggestions contained in the memo provided as necessary. The motion was seconded by Mr. Shiah. The motion passed (5-0).

Agenda Item #10 Presentation of Audit Reports

Mr. Dinan explained that the audits of Hon. Richard G. Woodbury and Beth P. Turner resulted in no findings.

Agenda Item #11 Selection of Date for September Meeting

The next date for the Commission to meet will be September 21, 2007.

OTHER BUSINESS

Ms. Thompson raised the issue of having the staff develop a written protocol for the conduct of Commission meetings. She also requested that the complaints by Carl Lindemann that have been forwarded to the Commission members be placed on the Commission's agenda for a public discussion. She said that she thought that the Commission should review all complaints that are submitted to the Commission for it to decide on how to proceed with them. Mr. Wayne explained how the staff handles complaints which are outside of the Commission's jurisdiction.

Ms. Thompson said that after reading the materials filed by Mr. Lindemann it seems to her that the issue of whether the Commission has jurisdiction over the issues in the complaint is not so clear cut. She said that the Commission should have an open discussion about the issue of the Commission's jurisdiction.

Mr. Friedman disagreed with allowing any individual to file any complaint that has some term of "ethics" or "clean elections" in it in the attempt to get a full-blown discussion in front of the Commission. The mere fact that someone entitles something "complaint" or "violation of ethical rules" does not mean this Commission has jurisdiction to hear it. The Commission is established by a statute which defines what the Commission can and cannot do. Given the fact the Commission is comprised of lay individuals with time commitments outside of the Commission, he expressed his concern about taking on a case that the Commission's counsel and staff have determined is beyond the Commission's jurisdiction. If someone disagrees with that determination, that person can appeal to the courts or legislative leadership or Governor. He said that he thought it would be an unwise use of the Commission's time and resources to hear matters over which the Commission had no authority.

Mr. Friedman said that Mr. Lindemann was directed at the last meeting to prepare a legal brief with his attorney that discusses the jurisdictional issue. Mr. Friedman said the Commission has not received such a document and instead received a document that states Mr. Lindemann's thoughts on what the policy ought to be. The preliminary issue is the jurisdictional one. The Commission could have a discussion on the jurisdictional issue of whether the Commission has the statutory duty to disqualify a member. However, Mr. Friedman stated that he was not inclined to have that discussion based on the opinion of counsel and staff.

Ms. Thompson thought that a discussion on the jurisdictional issue should be heard. She recognized and respected the chair's position in having to weed out the matters that come before the Commission for discussion. However, this issue seems to be persistent and she believes it should be settled.

Ms. Ginn Marvin pointed out that the Governor will be appointing someone new to replace her in September. She suggested that the jurisdictional issue discussion be put off until later in September. She said that if she is replaced it would be unnecessary for the Commission to use its resources on something that is not going to take place.

Mr. Lindemann sought to be recognized by the chair. He questioned the propriety of Ms Ginn Marvin discussing her own case. Mr. Friedman reminded Mr. Lindemann that there was no case against Ms. Ginn Marvin. The Commission was discussing the jurisdictional issue, nothing more.

Mr. Friedman said the issue could be discussed today or tabled until the next meeting to give everyone more time to do more research on the legal authority of the Commission.

Mr. Cassidy said he believes that the Commission Counsel, Phyllis Gardiner, and the Executive Director, Jonathan Wayne, know the rules and statutes of the Commission and the state of Maine. If they said that the Commission has no jurisdiction in this area, then he respects their advice.

Mr. Lindemann asked whether there would be an opportunity for public comment. Mr. Friedman said the Commission will hear only comments on the jurisdictional issue.

Ms. Gardiner clarified that the question the Commission is discussing at this point is whether to take up the issue of whether the Commission has the jurisdiction to hear the complaint. Ms. Gardiner suggested that the Commission may want to first have a motion on the table as to whether and when to have the discussion on the jurisdictional issue before taking public comment.

Ms. Thompson withdrew her request to place Mr. Lindemann's complaints on the agenda since a new Commission member is to be appointed in September, which would make this matter a moot point.

Ms. Ginn Marvin again suggested holding the next meeting late in September in order to make sure that it was scheduled after the Senate confirmation session.

Mr. Lindemann stated that Ms. Ginn Marvin's involvement in this discussion is highly problematic.

Mr. Friedman said that Mr. Lindemann has made certain assumptions that the Commission has not accepted or adopted. The discussion is about the general jurisdictional issue and not about a specific matter.

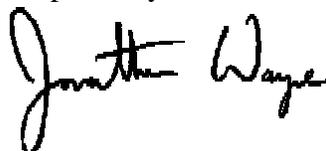
Mr. Lindemann insisted on making a clarification that he was not directed to submit a legal brief on the jurisdictional issue but rather it was suggested that he submit such a brief. He said that he is not a regulated entity and not subject to the Commission's commands. He is a citizen and not to be excluded from filing appropriate complaints. He asked whether this was a global prohibition against any discussion having anything to do with Commissioner Ginn Marvin.

Mr. Friedman moved that the Commission accept the staff's view that the issue presented is not one within the Commission's jurisdiction. Mr. Friedman clarified that the issue is whether the Commission has the authority to disqualify a member of the Commission. Mr. Cassidy seconded the motion.

The motion passed by a vote of 4-0 with Ms. Ginn Marvin abstaining.

There being no further business, the meeting adjourned at 12:10.

Respectfully submitted,

A handwritten signature in black ink that reads "Jonathan Wayne". The signature is written in a cursive, flowing style.

Jonathan Wayne
Executive Director



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

To: Commission Members and Counsel

From: Jonathan Wayne, Executive Director

Re: Comments by Carl Lindemann on Draft Minutes of Commission's August 13, 2007 Meeting

Date: September 20, 2007

I just returned from three days out of the office, and have reviewed comments submitted by Carl Lindemann regarding the draft minutes for the Commission's August 13 meeting. The minutes were prepared by Commission Assistant Cyndi Phillips and Assistant Director Paul Lavin. **After listening to the relevant portion of the August 13 audio recording, I do not see the need to alter the draft minutes included in your packet.** Phyllis Gardiner also has listened to the audio and believes the minutes are accurate.

On July 2, 2007, Carl Lindemann submitted a complaint to the Governor and the Presiding Officers of the Legislature requesting that they appoint a "special counsel" to investigate Commission member Jean Ginn Marvin and whether she should be removed from the Commission. To my knowledge, the Governor and Presiding Officers took no action to investigate or disqualify Ms. Ginn Marvin. Subsequently, on August 6, 2007, Mr. Lindemann submitted a letter to the Commission regarding Ms. Ginn Marvin's position on the Commission. The letter requested, among other things, that the Commission "[c]onsider a vote of censure, reprimand, suspension, or expulsion of Commissioner Ginn Marvin"

The merits of Mr. Lindemann's August 6 letter were not discussed at the August 13 meeting. Under the heading of "Other Business," however, the Commission members discussed whether to consider more fully the Commission's jurisdiction to take action on Mr. Lindemann's request.

I agree with the language in the minutes summarizing the Chair's motion that the Commission lacked jurisdiction. An unofficial transcript of that motion is attached. If you believe the description of the motion needs more detail or is erroneous, please let me know. Also, to be clear about the view of the Commission staff, I agree with the Chair that under 1 M.R.S.A. § 1002 the Ethics Commission as a body does not have jurisdiction to disqualify a member from serving on the Commission.

Thank you.

***Unofficial Transcript of Chair Michael Friedman's
Motion during Other Business at the August 13, 2007 Meeting***

FRIEDMAN: I make a motion that we accept the commission staff's view that the issue presented is not one within which we have jurisdiction.

LINDEMANN: Which issue? Could you be specific?

FRIEDMAN: The issue as you have framed in your ...

LINDEMANN: Because you presented the issue differently in your response to it. Which one are you excluding?

FRIEDMAN: We are excluding any discussion as to whether or not we have the authority to disqualify a member of this commission.

LINDEMANN: I never raised that issue with the commission.

FRIEDMAN: I disagree. That's the motion.

CASSIDY: I'll second.

FRIEDMAN: Any discussion? [none]

FRIEDMAN: All in favor? [4 votes in favor] Opposed? [0 votes to oppose] [Jean Ginn Marvin did not vote.].

GINN MARVIN: Abstain.

LINDEMANN: Could the record show that Commissioner Ginn Marvin participated ... ?

GINN MARVIN: No, I abstained.

FRIEDMAN: She did not. [simultaneous with Ms. Ginn Marvin's response]

LINDEMANN: You abstained. [unclear because of simultaneous comments]

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For a more Authentic Democracy

Phone 207-774-1936
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P.O. Box 171
Portland, Maine 04112

September 17, 2007

Dear Paul,

There are numerous inaccuracies and omissions in the minutes for the August 13 meeting that substantially alter both the meaning of the discussion and the substance of the motion passed under "Other Business". These require correction if the minutes are to present an accurate record of those proceedings arising from former Commission Chair Ginn Marvin's failure to disclose important information to the legal and Veterans Affairs Committee and her subsequent conduct.

1.) An important statement you made has been omitted in his opening exchange with Commissioner Thompson depicted on page 14 of the minutes:

Thompson: Do you specifically claim, like other complaints, there is no jurisdictional ability here?

Wayne: I know I had a chance to talk this over with the Chair and with the Commission's Council. I know the Chair has his own, uh, points of view on this. So I don't - we as staff can start to get into jurisdiction issues if you like...

Friedman: (interrupts)...I disagree....(picked up as paragraph 3, page 14).

The record should be explicit that Executive Director Wayne, "as staff", did not present a view on the jurisdiction issues here. Instead, what is offered immediately after is the Commission Chair's view. Other documentation supports this. Mr. Friedman's letter of August 9 is presented, as the Chair's "own...point of view on this." This is also consistent with the phone conversation I had with Mr. Wayne on August 7 that I confirmed in writing. There, he stated "the Chair does not believe that it is the Commission's place to disqualify or dispel Commissioners."

2.) The minutes depicting Commission Chair Friedman's statement following his interruption of Mr. Wayne's offer contains a fundamental misstatement. The third paragraph, fourth sentence, Commission Chair Friedman seems to indicate that the matter of interest is about "a case that the Commission's counsel and staff have determined is beyond the Commission's jurisdiction."

However, in the recording of the session, Mr. Friedman does not indicate, nor is there any evidence, of such a determination. Instead, he says this is "a case that the Commission's counsel and staff have **indicated initially** we don't have jurisdiction to hear" (emphasis added).

He is referring to the cursory statements that the Assistant Attorney General made on July 16. That there has been no "determination" whatsoever on this point is underscored by Assistant Attorney General Gardiner's clarification on page 16 of the minutes, second paragraph. The minutes do follow the verbatim from the recording here:

Gardiner: The question the commission is discussing right now is whether or not to take up the issue of whether or not the commission has jurisdiction...so maybe you want to have a motion to deal with just that question before you get into whether you're going to hear from (Mr. Lindemann on the jurisdictional issue)...

With this, the Assistant Attorney General stopped me from presenting a view counter to the Commission Chair's opinion on jurisdiction as well as her own cursory statements.

3.) The Assistant Attorney General's clarification removes what, perhaps, has been taken as an ambiguity allowing for what is clearly a fundamental misrepresentation of the motion.

Here is how the minutes now present the motion:

Mr. Friedman moved that the Commission accept the staff's view that the issue presented is not one within the Commission's jurisdiction. Mr. Friedman clarified that the issue is whether the Commission has the authority to disqualify a member of the Commission.

The second sentence, Mr. Friedman's clarification, is counter to what he actual stated in the meeting. It presents a fundamentally different motion. He did not say that "the issue is whether the Commission has the authority to disqualify a member of the Commission." Instead, this is the verbatim of his motion as he clarified it:

Friedman: We are excluding any discussion as to whether or not we have the authority to disqualify a member of this commission.

In fact, I objected to this. Mr. Friedman confirmed this was exactly the motion he wished to put forward. "That's the motion," he said. Commissioner Cassidy seconded that motion as the minutes accurately reflect.

The only reasonable reading of the motion in context is that this is precisely the motion that the Assistant Attorney General suggested as procedurally necessary. This motion had to occur PRIOR to anything akin to what the Chair initially suggested, then altered. His "clarified" and corrected motion "excluding any discussion as to whether or not we have the authority to disqualify a member of this commission" is what was voted on.

Please correct the notes so that they accurately reflect the discussion and motion passed when they are brought up for ratification at the session this week. If you have any questions about this, please let me know.

Yours Very Truly,

