Agenda Item #1

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

Minutes of the July 28, 2008, Meeting of the
Commission on Governmental Ethics and Election Practices
Held in the PUC Hearing Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Michael Friedman, Esq., Chair; Hon. David Shiah; Hon. Francis C. Marsano; Hon. Edward Youngblood. Staff: Assistant Director Paul Lavin; Phyllis Gardiner, Counsel.

Hon. Mavourneen Thompson planned to attend the meeting by telephone but due to technical difficulties was not able to connect.

At 9:05 a.m., Chair Michael Friedman convened the meeting.

The Commission considered the following items:

Agenda Item #1. Ratification of Minutes of the June 27, 2008, Meeting

Mr. Lavin informed the members that there were amendments to the minutes. Mr. Shiah moved to accept the amended minutes. Mr. Marsano seconded the motion.

The motion passed (3-0). Mr. Youngblood abstained since he was not present at the June meeting.

Agenda Item #2. Request for Advice from the Maine State Employees Association

Mr. Lavin explained that the Maine State Employees Association has requested advice regarding whether a group of membership organizations could jointly pay for a membership communication which contains express advocacy and which is sent to the organizations' members, and still claim the exception allowed in statute for membership communications. He explained that membership communications do not count as independent expenditures and would not trigger matching funds if a Maine Clean Election Act candidate was involved in the race. The second question from Mr. Belcher was what would be the proper disclosure

on such a communication. Mr. Lavin stated his opinion that, if several organizations that would be able to take advantage of the exception individually, joined together to pay for a communication, he did not see how that fact would alter their ability to use the exception.

Mr. Belcher said this issue came to his attention because of a Federal Election Commission ruling regarding three trade associations, each of which sponsored and participated in a teleconference opened to their members at which presidential candidates spoke to the members. The FEC ruled that since it was a membership communication and each organization had paid their pro rata share, it was permissible. He said that the MSEA has not made any arrangements yet with other organizations and that the communications may involve mailings, phone banks, and literature distribution. He said that if the expenses for the communication were appropriately allocated among the organizations, properly reported to the Commission, and if the communication had the appropriate disclosure statement on it, he believed the organizations would be acting in a manner that was consistent with Maine law.

Mr. Friedman asked if the aligned organizations would be limited to membership organizations.

Mr. Belcher said they would all be membership organizations.

Mr. Friedman asked Mr. Belcher what he thought would be the appropriate disclosure.

Mr. Belcher explained the communication would state that it was not authorized by any candidate and would also state the name of the organizations that had paid for the communication.

Ms. Gardiner concurred with the staff's view. She said that she did not see a reason why organizations that could communicate with their members independently could not do it in a combined way. She said that the better form of disclosure statement may be for each individual organization to have only its name on the statement for those communications sent to its members. However, she did not think it would create a legal problem if all the organizations that paid for the communication were listed.

Mr. Youngblood asked Ms. Gardiner if she was saying that the disclosure should list only the organization to whose members the communication is actually being sent as opposed to the list of all organizations that paid for the communication.

Ms. Gardiner said that if the Commission wanted the disclosure statement to be printed as if the organization had acted independently, that organization would be the only one listed. She said that would be the more traditional format but it may not be practical depending on the nature of the communication.

Mr. Youngblood said that if the disclosure statement listed a lot of organizations with a small number of members and a few large organizations, it could give the impression that there is a large number of people supporting a particular candidate, when in fact there is not. He said that he thought only the individual organization to whose members the communication is being sent should be listed.

Mr. Marsano agreed with Mr. Youngblood.

Mr. Shiah said either listing a single organization or multiple organizations would be acceptable since both are compliant with the law.

Mr. Lavin asked if it would be practical to identify the individual organization that the member belonged to if the communication was made by telephone.

Mr. Belcher said that for phone banks, it would be easier to determine to which organization the member belonged because that information would likely be available to the caller. Printed communications may be more difficult because one would have to know beforehand how many should be printed with the individual organization's name or they would have to be hand-stamped after they were printed. It would be much easier if all the organizations could be listed. He said that there would probably only be three or four organizations that would participate in this.

Mr. Friedman made a motion that the Commission's view is that membership organizations can act together to issue a membership communication. Mr. Marsano seconded the motion.

Mr. Marsano asked for a clarification as to whether by saying "issue a communication," Mr. Friedman meant "to pay for a communication." Mr. Friedman stated he did mean that.

The motion passed unanimously (4-0).

Mr. Youngblood expressed concern with a disclosure statement that listed multiple organizations. He said that a disclosure with the individual organization listed would be more appropriate.

Mr. Friedman asked Ms. Gardiner what the legal standing of the Commission's advice is.

Ms. Gardiner stated that the Commission would be on record regarding its interpretation of the statute. If someone relied on that advice, that party would consider itself to be shielded from complaints. However, a court may not agree with the Commission's interpretation.

Mr. Shiah stated that if multiple groups were permitted on the disclaimer, the courts could state that interpretation is legal because it is communication to members.

Mr. Friedman stated that the membership organizations will ultimately have to determine how they proceed.

Mr. Lavin explained that organizations spending more than $50 per candidate per election are required to file a report with the Commission, which is available on the Commission's website.

Mr. Shiah moved that the issue of the disclosure statement be left up to the participating membership organizations as long as it meets current statute (21-A MRSA §1014). Mr. Friedman seconded the motion.

Mr. Youngblood said this motion indicates the Ethics Commission does not want to take a stand on this issue.

Mr. Shiah stated that as long as the organization's procedure meets the requirements of the current statute and the communication has a disclosure, it would be in compliance.

The motion failed (2-2). Mr. Friedman and Mr. Shiah in favor; Mr. Marsano and Mr. Youngblood opposed.

Mr. Youngblood moved that the disclosure on communications indicate the organization's name to whose members the communication is being sent. Mr. Marsano seconded the motion.

The motion failed (2-2). Mr. Marsano and Mr. Youngblood in favor; Mr. Friedman and Mr. Shiah opposed.

Agenda Item #3. Complaint of Campaign Finance Violation by Candidate Geraldine Randall

Mr. Lavin explained that the Ethics Commission received a complaint from Eric McVay that House candidate Geraldine Randall received used wire frames from former candidate Debbie Gibbs for campaign signs, and sold them to a print shop to receive credit or a discount for a campaign purchase. Mr. Lavin said that Ms. Randall responded that she paid the print shop in full for all of her campaign purchases, and denies that she received any credit. Mr. Lavin said the Bangor Letter Shop has provided paid invoices indicating that it received full payment for the materials Ms. Randall purchased. Mr. Lavin said the questions are whether Ms. Randall received an in-kind campaign contribution by accepting the wire frames and whether she used the frames to get a discount or credit from the Bangor Letter Shop.

Valerie Carr Winocour explained that Debbie Gibbs offered to give used wire frames to Ms. Randall and Ms. Winocour. Ms. Randall picked up the frames from Ms. Gibbs with the intent of sharing them with Ms. Winocour. Ms. Randall dropped off half the frames at the home of Ms. Winocour. Ms. Winocour counted the frames left by Ms. Randall and there were 110 wire frames. She said Eric McVay sent the letters to the Commission complaining about the situation. She said Mr. McVay's guardian did not want him to attend this meeting and be subjected to questioning because of Mr. McVay's disability. Ms. Winocour contacted the Commission and was originally told she had to pay fair market value for the wire frames to the person who gave them to her. In a later conversation with the Commission staff, she was told that the used wire frames had no value and Ms. Winocour could do whatever she wanted with them. At that point she thought the issue was resolved; however, she said there have been many lies spread and her name has been degraded so she filed a complaint against Ms. Randall. She said Ms. Randall lied about the total number of wire frames that were picked up and brought to the Bangor Letter Shop. She said she still has the wires and does not intend to use them or any other wires given to her in the future.

Ms. Debbie Gibbs said she offered the wires to the two candidates because she was going to throw them in the trash. She had a total of approximately 400 – 500 wire frames, some were used when she got them and

some she purchased. She helped Ms. Randall load them into the truck. She received a call from Ms. Winocour when the Commission told her she would have to pay fair market value for them. Ms. Gibbs said any money she took for them would have to be given back to the Maine Clean Election fund because she ran as an MCEA candidate in 2006 when she used the wire frames. Ms. Gibbs expressed concerns over Ms. Randall's call to her in which she explained that she had been contacted by the Ethics Commission. Ms. Randall told Ms. Gibbs to tell the Commission that Ms. Gibbs had given her 300 wire frames, when in fact there were 400 – 500 frames that were loaded into Ms. Randall's truck the day Ms. Randall came to get them from Ms. Gibbs. Ms. Gibbs called the Commission staff to explain the situation and say that Ms. Randall had picked up 400 - 500 wire frames, not 300 as Ms. Randall had told the Commission staff. Ms. Gibbs stated that she wanted to set the record straight as to the number of wires and the remarks that Ms. Randall made to her.

Mr. Friedman asked what the cost was for a wire.

Ms. Gibbs said she paid approximately $1 for each frame and she had purchased 450 in 2006. She also had approximately 150 used wires, which she picked up on the side of the road.

Ms. Geraldine Randall explained that Ms. Gibbs had originally offered approximately 300 wire frames. Ms. Winocour and Ms. Randall decided to split the wires between them. Ms. Randall said she picked up the wire frames from Ms. Gibbs after Ms. Winocour said that she was not able to do so. Ms. Gibbs helped her load them into Ms. Randall's truck and at that time Ms. Gibbs said it appeared there were more wires, perhaps 400. Ms. Randall said no one counted them at that time. When Ms. Randall called to let Ms. Winocour know the wires were available for her to pick up, Ms. Winocour said she was too busy to pick them up. Ms. Randall and Mr. Randall counted the wires and delivered half of the wires to Ms. Winocour. Ms. Randall thought all was fine at that point, until she received a phone call from Ms. Winocour. Ms. Winocour was very upset because she said there were only 110 wires dropped off by Ms. Randall. She said the Bangor Letter Shop offered to swap out 150 small wire frames that she received from Ms. Gibbs for larger ones that she needed for her campaign signs. She said when she found out that the wires she had dropped off had no value, she paid the Bangor Letter Shop for the 150 wires that she needed. She said she would not have accepted the wires if she had known it would cause such an issue. She offered to pay Ms. Gibbs for the wires also.

Mr. Friedman asked Ms. Randall why she thought the wire frames were valueless.

Ms. Randall said the wire frames were covered with heavy rust and some were slightly bent. She further stated that she has accepted no money for her campaign.

Mr. Friedman asked if a rusty wire frame could hold a sign.

Ms. Randall said it would hold the sign but does not look good and they are very messy to deal with.

Mr. Irvin W. Marsters, Jr., Bangor Letter Shop, said he offered Ms. Randall used wires that were not rusted and were a better size for her signs, which she could swap for her wire frames. He said Ms. Randall and Ms. Winocour brought the wires to his shop and the wires were not counted. He said he usually does not count out wire frames, but uses approximate numbers. The wire frames dropped off by Ms. Randall and Ms. Winocour were very rusted and bent and had no re-sale value to him. He said Ms. Randall was more comfortable paying for the 150 wires she received and she has receipts for the payment. She received no credit from the Bangor Letter Shop. He said these old wire frames are still sitting in his shop and are not worth his time to fix them up.

Mr. Zachary Jackman, treasurer for Ms. Randall's campaign, said he has been advising Ms. Randall regarding the issue. He said he deals with wire frames often and knows that the used wire frames have no value because the rust on the frame will destroy the sign. He said he currently has a truckload of used frames from the Maine Republican Party's office that he removed to clean out the office's garage. He said because the wires have no value, this was not an in-kind contribution. Ms. Randall purchased the used wires from the Bangor Letter Shop with her Clean Election money, and the Bangor Letter Shop gave her no credit for the old wires. He said the lesson learned here is to purchase new wire frames and not try to recycle the old frames.

Discussion took place regarding whether the wire frames had value.

Ms. Ruth Trask, from Hudson, spoke about the length of time she has known Ms. Randall and Ms. Randall's good character.

Mr. Joseph Greenier, former candidate for Senate, said he would like the Commission to clarify the issue of used wires frames for candidates' future information. He said that used wires are very messy to deal with. He said he ended up purchasing new wires because the effort needed to get the used wires into shape was not worth it.

Mr. Friedman asked for clarification on what the Commission's decision pertained to.

Mr. Lavin explained that this is a compliance issue as to whether Ms. Randall received an in-kind contribution. He further stated that there may have been an attempt to receive credit for the used wires originally, but that did not happen and Ms. Randall paid for wire frames she is currently using.

Mr. Friedman said the first issue is to determine whether there was any value to the wire frames. He said if there is no value, there is no in-kind contribution; however, if the wire frames do have value, then a determination needs to be made as to their use.

Mr. Youngblood said the materials in the agenda items alleged that Ms. Randall sold wire frames to raise money for her campaign. He said there was no evidence to that effect today.

Mr. Marsano agreed. He moved that the Commission find there was no in-kind contribution received by Ms. Randall. Mr. Youngblood seconded the motion.

The motion passed unanimously (4-0).

(Five minute break.)

Ms. Thompson contacted the Commission staff and requested that Mr. Friedman read the following statement into the record: Ms. Thompson tried for 50 minutes to call into the meeting but was unsuccessful. She realizes it was not the fault of the Commission staff but was a system failure. She appreciates the efforts made to connect her to the system and the willingness of the Commission members to delay the meeting in an attempt to include her.

Agenda Item #4. Proposed Rulemaking on Seed Money Contributions

Mr. Lavin explained that at the Ethics Commission's meeting on June 27, 2008, the Maine Citizens for Clean Elections (MCCE) requested that the Commission amend its rules to permit candidates for Governor seeking public financing under the Maine Clean Election Act to collect up to $100,000 in seed money contributions. Mr. Lavin said that the Legislature included in the original statute, the provision to allow the Commission to raise the seed money limits by rule rather than statutory amendment. He said the MCCE has heard from potential gubernatorial candidates for the 2010 election that the current seed money amount of $50,000 will limit their ability to establish an effective statewide campaign. He said currently the law allows gubernatorial candidates to raise $100 per individual up to $50,000 only. He said the staff's view is there is no down side to raising the limit to $100,000. He said it will make the program more attractive for candidates seeking the Governor's office and will not result in any additional spending of public funds.

Mr. Lavin clarified that no potential candidate has contacted the Commission staff, but they have been in touch with MCCE representatives.

Alison Smith, co-chair of the Maine Citizen's for Clean Elections (MCCE), said she did not have anything to add to the testimony she gave at last month's meeting, except to encourage the Commission to begin the rulemaking process for raising the seed money cap as soon as possible.

Mr. Friedman questioned whether this would pose a problem for independent candidates.

Ms. Smith said it would not since the seed money process does not change, only the cap will change. The structure stays the same for all candidates. She said potential gubernatorial candidates have stated that the current cap is too low, regardless of the party and, in fact, she said the current cap of $50,000 has already discouraged some candidates from seeking Clean Election funding. She said the limit was set back in the early 1990's and it was not known then whether that amount would be adequate or too high or too low. She said that the MCCE did not think that there would be any harm to raising the seed money cap for gubernatorial candidates.

Mr. Friedman asked about changing the individual contribution amounts.

Ms. Smith said that would require a statutory change and the MCCE would not support such a change.

Mr. Youngblood asked who was pushing to increase the amount. He said over the last six years there has been only one candidate who raised $50,000. He said the major parties would have an advantage over an independent candidate who does not have the funding network that party candidates have to back them.

Ms. Smith said there has been no pressure from any particular entity or person to bring this issue forward. The MCCE brought the issue up, based on MCCE's observation and its mission to keep a viable public financing program available for candidates. She further stated that potential candidates have discussed their concerns with the MCCE staff that $50,000 seed money is not a sufficient amount to get a viable candidate through to April when the first MCEA payment would be made. She said seed money is limited private funding allowed in the publicly funded program and it is optional for candidates to raise seed money. She said raising the cap does not give an advantage or disadvantage to any type of candidate.

Mr. Shiah asked what happens to the seed money if a candidate does not spend it all.

Ms. Smith said unspent seed money is part of the revenue stream for the Clean Election fund and is deducted from the first payment to the candidate.

Ms. Ann Luther, co-chair of the MCCE, said she agreed with Ms. Smith and said there are no disadvantages for the independent candidates.

Mr. Joseph Greenier said he did not support raising the seed money total to $100,000. He also said the money should be restricted to come from the candidate's own district in order to avoid undue influence.

Mr. Shiah asked for clarification that the Commission is only being asked to initiate a rulemaking on this issue.

Mr. Lavin stated that this would be a major substantive rulemaking; therefore it would need to go before the Legal and Veterans Affairs Committee first and then go before the Legislature, which could happen in January. He said the MCCE wants to start the process now so there will be plenty of time for the process to take place. He further stated it will get Legislative review during this process and there will also be an opportunity to testify at the Committee hearings. Mr. Lavin also reminded the Commission that the

number of qualifying contributions for gubernatorial candidates has increased by 30%, which will put a greater burden on the candidates. He said members of previous gubernatorial campaigns testified that this increase places more administrative and financial burden on those candidates, even with an option for voters to make qualifying contributions on-line.

Mr. Shiah moved that the Commission initiate the rulemaking process to raise the limit on total seed money contributions for gubernatorial candidates to $100,000. Mr. Marsano seconded the motion.

Mr. Youngblood asked if the current amount of $50,000 was part of the original referendum vote.

Ms. Gardiner said her belief was the amount was in the original citizen initiative in 1996. Ms. Smith confirmed this and said that the language that allowed the Commission to change the seed money limits by rule was also in the original citizen initiative.

The motion passed unanimously (4-0).

Agenda Item #5. Report on Maine Clean Election Act Funding for Gubernatorial Candidates

Mr. Lavin stated that this was on the June agenda for a public hearing. On June 27, 2008, the Commission received public testimony regarding the gubernatorial part of the Maine Clean Election Act program. The original request by the Legal and Veterans Affairs Committee asked the Commission's executive director to draft a report regarding the sufficiency of the current qualifying requirements for gubernatorial candidates seeking public campaign financing under the Maine Clean Election Act. Mr. Lavin said a discussion took place at the June meeting regarding what role the Commission members would play in the final report that is submitted. Mr. Lavin said the item is back on the agenda today for those Commission members who may wish to make comments to the staff or to suggest topics of research that would be helpful to the Legislature that would be included in the report.

Mr. Friedman commented that the Legislature should not alter the Clean Election program or remove a part of the program for certain candidates because of the State's budget constraints. He said the MCEA was a citizen's initiative that was intended to fund potential gubernatorial candidates. He said any major change to the Act has to go back to the citizenry for their vote. He said that it would be a mistake for the Commission to endorse the eradication of the gubernatorial part of the program.

Mr. Youngblood and Mr. Shiah agreed with Mr. Friedman. All concurred that major changes should go back to the voters.

Agenda Item #6. Policy on Candidates' Payments of Campaign Funds to Family Members

Mr. Lavin said that, at the June meeting, the Commission adopted a policy regarding candidates' payments of campaign funds to family members. Mr. Lavin said this item was back on the agenda due to questions raised about the wording regarding reimbursements to family members. Mr. Lavin explained that the wording on reimbursements seemed to say that reimbursements to a family member were discretionary. However, if a MCEA candidate did not reimburse a family member, it may result in an impermissible in-kind contribution. He said the staff has drafted proposed changes to the adopted policy that would clarify the guidance regarding the reimbursement of family members who use personal funds to pay for campaign purchases. Mr. Lavin stated that the Legislature did not intend that reimbursements be subject to the preapproval process or be prohibited all together. He said that the guidance was edited to make it very clear to candidates that there was a general outright prohibition against using MCEA funds to pay family members but that there were two narrow exceptions. He said the policy was also amended to make it clear that candidates have to report on their campaign finance forms when a family member is reimbursed.

Mr. Friedman asked for clarification whether the comments received at last month's meeting were incorporated in the changes made.

Mr. Lavin confirmed this and said the new draft was submitted to those who expressed concern at the last meeting. He said Mr. Dan Billings, Ms. Alison Smith and Ms. Ann Luther had received a copy of this new draft.

Mr. Dan Billings said his concern last month was that the issue of reimbursement was not covered well in the original draft policy. He stated that the statute indicates the Legislature did not intend for reimbursements to family members fall within the prohibition or preapproval process. He said the staff changes have resolved many concerns he expressed about the policy presented at the meeting last month.

Ms. Alison Smith said she appreciated the staff's clarification of the policy. She said her only objection was that the last paragraph was not needed and she would support taking it out of the guidance. She also

said the MCCE does not support a pre-approval process. She said the Legislature never contemplated requiring candidates get permission before paying a spouse, but they did talk about making it illegal to pay a spouse.

Mr. Lavin said, regarding the second paragraph that Ms. Smith brought up, that the staff intended it to reinforce the requirements regarding reimbursement.

Mr. Shiah moved to accept the staff's amended policy on paying campaign funds to family members. Mr. Youngblood seconded the motion.

Mr. Marsano said he disagreed with the staff's interpretation of the statute. His reading of the statute was that the Legislature intended to have the public made expressly aware in a public forum that a family member was being paid with a candidate's Clean Election funds. He said that he thought the earlier version was superior to the proposed amended version. He said he did not support the amended version submitted by staff today.

The motion passed (3-1). Mr. Marsano opposed.

Agenda Item #7. Draft Guidance on Ballot Question Committees

Mr. Lavin explained that this issue was also on the June meeting agenda for public comment. He gave a summary of the testimony received at that meeting regarding the proposed guidance on the new reporting requirements. He said the new law enacted by the Legislature changed the reporting requirements for organizations which do not qualify as political action committees but which spend more than $5,000 to influence a ballot question election. He said that the Commission, after hearing the testimony at the June meeting, requested that the staff's counsel, Phyllis Gardiner, review the guidance and prepare another draft. Mr. Lavin said the primary issue raised by advocacy organizations was that the Commission should adopt a bright line test so that organizations will know with some degree of certainty what types of expenditures would count toward the $5,000 amount.

Ms. Gardiner said the new language in the guidance tracks the Supreme Court's language that defines the "functional equivalent" of express advocacy. She said that it was worth noting that the federal cases that dealt with these issues involved candidate elections and that there is no analog to a ballot question

referendum at the federal level. In an effort to make a brighter line for advocacy organizations, the language was borrowed from the court's functional equivalent test. She also advised the guidance be reviewed on a regular basis since this is an area of law that is actively litigated.

Zachary Heiden, legal director for the Maine Civil Liberties Union, expressed appreciation for the review and improvements to the guidance for organizations that engage in advocacy. He said many concerns he expressed in June have been addressed; however, he said two words in the guidelines still cause him concern. He said that the first word that concerned him was "purpose" with regard to a communication or activity by public advocacy organizations. It is difficult to predict what the purpose of a particular piece of public advocacy material will be. He said communications and activities of public advocacy organizations may have a variety of purposes, and sometimes involve the promotion or defeat of law. However, he said that did not change the nature of the work from public advocacy, which is protected by the First Amendment into campaigning, which is regulated. For that reason, he thinks that the express advocacy test rather than the functional equivalent test is better. He said the second word causing concern is "neutral." Mr. Heiden said advocacy organizations are not neutral, since they have perspectives and positions. He said overall the guidelines are much improved and it will assist those engaged in ballot question activities.

Daniel Billings, Esq., expressed appreciation to staff and Ms. Gardiner for the improved guidelines. He said this draft has clearer guidance for organizations. He said that the underlying problem is the overbroad language in the statute, referring to the language regarding activities and communications that "influence in any way" an election but he said that is a problem for the Legislature to correct. He further expressed his view that if this guidance had been in effect during the 2006 TABOR ballot issue, the Maine Heritage Policy Center would have been required to report its financial activity related to the campaign. He said MHPC's work regarding the Dirigo health insurance program would not be considered covered activity and communications under the guidance because MHPC has been engaged in this work for several years and will likely continue to engage in it and they have not taken a position on the upcoming people's veto regarding a new tax to fund the program. MHPC has a definite position on the program but they have not connected that with the people's veto.

Mr. Friedman stated that the staff and Ms. Gardiner are to be commended, and the result will help the public understand what the requirements are under these guidelines.

Mr. Shiah moved to adopt the revised draft guidance on reporting requirements for ballot question committees as provided by the staff. Mr. Marsano seconded the motion.

The motion passed unanimously (4-0).

Agenda Item #8. Draft Form for Annual Disclosure Statements for Commission Members

Mr. Lavin explained that the Maine Legislature enacted a law in 2008 requiring the members of the Ethics Commission to file an annual disclosure statement regarding positions they hold in political committees. Mr. Lavin said the staff has prepared a draft form for the Commission's consideration. He also noted that Mr. Marsano had suggested a change in the last section under additional comments.

Mr. Marsano said that his proposed revision was intended to address two items. First, Commission members disclose a great deal of information when they are being considered for appointment. He did not think it was necessary to restate the information that was already provided and that was already a matter of public record. The second item involved the use of the word "could" on the form. The statute uses the word "would" with regard to whether something "would" give rise to the appearance of a conflict of interest. He thought that was a significant difference that merited further examination.

Mr. Youngblood asked about federal involvement under the political fundraising section. He asked if fundraising at the federal level was left out intentionally.

Discussion took place regarding fundraising for federal candidates.

Ms. Gardiner said a common-sense reading of the statute would mean a Commission member would have to be actively engaged in political fundraising and soliciting contributions from others, but did not include the Commission members' personal political contributions to others.

Mr. Shiah suggested striking the "based in Maine" wording under non-profit organization affiliation.

Mr. Friedman moved to adopt the amended disclosure form for members of the Commission. Mr. Shiah seconded the motion.

The motion passed unanimously (4-0).

Agenda Item #9. Complaint about Conduct of Elections in Town of Hope

Mr. Lavin said that the subject matter of the complaint is outside of the Commission's jurisdiction. After consulting with the Commission's counsel, the Commission's executive director advised the complainant that the Commission appears to have no jurisdiction over the complaint. Mr. Lavin said the issue would be within the purview of Attorney General's office and/or the Secretary of State's Office. The staff believes that no action by the Commission is required in this matter.

Mr. Marsano said that since the name of the Commission includes "election practices," he is not surprised that the public thinks this is the correct agency to take up such matters.

Ms. Gardiner said originally the Ethics Commission did consider these matters, but no longer does.

Executive Session

At 11:55 a.m., Mr. Shiah moved to go into executive session in accordance with Section 405, subsection 6(E) of Title 1 for the purpose of discussing pending litigation. The motion was seconded by Mr. Youngblood. The motion passed unanimously (4-0).

At 12:00 p.m., Mr. Shiah moved that the Commission come out of executive session. Mr. Marsano seconded the motion. The motion passed unanimously (4-0).

Mr. Friedman announced that this was Mr. Shiah's last meeting and thanked him for his service to the Commission. Mr. Shiah expressed his gratitude to his fellow Commission members, including Ms. Thompson who was not able to attend, and the staff and public advocates who came before the Commission.

There being no further business, the meeting was adjourned at 12:03 p.m.

Respectfully submitted,

Paul Lavin, Assistant Director