



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

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

STATE HOUSE STATION 101
OFFICE OF THE SECRETARY OF STATE
AUGUSTA, MAINE 04333

June 29th, 1990

Minutes of the June 29th, 1990 meeting of the Commission on Governmental Ethics and Election Practices held in Room 113 of the State Office Building, Augusta, Maine.

Present: Chairman Paul K. McCann; Members Henry G. Beyer, Gregory G. Cyr, Joseph B. Ezhaya, Richard H. Pierce, Paul E. Violette (afternoon session); Commission Counsel William Stokes

Absent: Richard L. Trafton, Paul Violette (morning session)

Chairman McCann called the meeting to order at 10:40 a.m.

Under routine business, travel and expenses vouchers were distributed.

The draft minutes of the May 8th meeting were approved with the following amendments:

On page 2, deleted from the first and third paragraphs respectively:
"Both Mr. Violette and Mr. Trafton changed their votes." and "Mr. Pierce, having cast the lone vote for Mr. Chaiken on the final ballot, requested that his vote be cast for Mr. McCann in the interest of achieving unanimity."

The Chairman introduced Commission members to those attending the meeting.

NEW BUSINESS

First, the Commission considered a complaint filed by Mr. Anthony Payne, campaign manager of Senate candidate Robin Lambert, calling for an investigation of the source of a campaign flyer distributed in Senate District #30 prior to the primary election.

Mr. Stokes emphasized that the Commission's purpose in reviewing the complaint was to learn the flyer's source, not to judge its contents. He noted that the document failed to identify the

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name and address of the authorizing agent as required by 21-A MRSA Section 1014 and that a report of the cost of the mailing may be required under 21-A MRSA Section 1019.

Mr. Beyer questioned the propriety of his voting on the matter, having made a small contribution to Mr. Lambert's campaign. Mr. Ezhaya offered the view that making a campaign contribution does not require abstention. Mr. Stokes concurred.

Ms. Canavan reported that several Commission inquiries failed to produce information leading to the person responsible for circulating the flyers. Mr. Lambert was present and offered to share with the Attorney General's office information which might prove helpful in an investigation of the matter. Mr. Pierce then moved, and Mr. Ezhaya seconded, to ask the Attorney General to conduct an investigation of the matter in conjunction with any other appropriate enforcement agency. The motion carried unanimously.

Next, the Commission considered the lateness of delinquent filers for the 6-day pre-primary reporting deadline (June 6th, 1990).

Mr. Norman Hammond was present and represented himself. Mr. Hammond stated he had received no reporting form but had received a reminder notice prior to the due date. Mr. Pierce suggested that, had the reporting form been sent by the Commission on June 8th as requested by Mr. Hammond, the candidate could have filed the report earlier. Mr. Ezhaya moved to reduce Mr. Hammond's penalty, but to find his report two days late (\$100.00), on the rationale that Mr. Hammond waited until June 8th, 1990 to request a reporting form from the Commission. The motion was seconded and carried unanimously.

Mr. Richard McDonough was present and represented himself. He explained that he had forgotten to file his report but had "faxed" it on June 9th, 1990, the day after receiving a call from Commission staff. Mr. Ezhaya's motion to assess a one-day penalty failed to receive a second. Mr. Cyr then moved to assess a two-day penalty (\$100.00); the motion was seconded and carried, Mr. Ezhaya opposing.

The penalties of other candidates were reduced or waived for the following reasons:

Representative John Telow called the Commission office several times to find out if his report had arrived and learned only later that his treasurer had suffered a diabetic attack and was bedridden. Mr. Telow subsequently drove from Lewiston to Augusta to file the report on June 11th, 1990, three business days after the deadline. Mr. Ezhaya moved that Mr. Telow's penalty be reduced from \$150.00 to \$50.00. The motion was seconded and carried unanimously.

Mr. Pierce moved to waive Mr. James Sullivan's penalty, the candidate's brother having suffered a massive coronary attack. The motion was seconded and carried unanimously.

Representative Herbert Adams "faxed" his report to the Commission on the due date, submitting the original report six days later, one day after the prescribed deadline. The law dealing with



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facsimile copies having been newly enacted and hence the source of some confusion, Mr. Ezhaya moved to waive the late fine; the motion was seconded and carried unanimously. There followed some discussion of the law relating to the submission of facsimile copies (21-A MRSA Section 1020(2)(F) and it was suggested that the Commission look into the possibility of obtaining a fax machine.

Mr. Pierce then moved that the penalty of Harness Racing industry Political Action Committee be waived because a copy of the law, sent to the PAC in April, was not updated to include newly enacted provisions that require PACs who collect or spend no funds to report. The motion was seconded and carried unanimously.

Mr. Pierce moved, and Mr. Cyr seconded, to find late all candidates and PACs who failed to submit excuses for filing after the due date. Lateness of those and other candidates not previously mentioned was determined as follows:

Candidate name	Number of days late	Penalty
Bradford Boutilier	1	\$ 50.00
*Joseph Bowman	2	\$ 100.00
*Karen Evans	1	\$ 50.00
Kenwood Freeley	2	\$ 100.00
*John Hoyt	2	\$ 100.00
*Elizabeth McClenahan	2	\$ 100.00
James Oliver	1	\$ 50.00
Juliet Perreault	1	\$ 50.00
Gayla Sue Pulkkinen	2	\$ 100.00
P. Kelley Simpson	2	\$ 100.00
Vivian St. Onge	1	\$ 50.00
*Neil Weinstein	2	\$ 100.00
Roger Whitney	1	\$ 50.00

PAC Name

Maine Citizens for Independence	1	\$ 250.00
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*Indicates candidates who submitted written excuses, all of whom were considered on an individual basis.

ROUTINE BUSINESS

Next, the Commission reviewed the status of its budget. Mr. McCann pointed out that the Commission lacks funds for needed equipment, i.e., computers and a fax machine. He added that he is exploring options and will report back his findings at the next meeting.



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The Director then requested permission to use Commission funds to attend a COGEL Conference to be held in Alaska in September. Mr. McCann emphasized that careful thought was given to the request in light of State budget constraints. Mr. Pierce, expressing his support, moved to grant permission for the trip, Mr. Beyer seconding the motion. The motion carried unanimously.

The Commission reviewed correspondence from the Director to Deputy Secretary of State, Gary Cooper, outlining Commission space needs. These include an area for public viewing of reports, privacy to discuss confidential matters, and computer space. Deputy Cooper was also asked to consider the Commission's need to establish an identity separate from that of the Secretary of State.

The director reported that the Secretary of State is reworking floor plans to conform more closely with the Commission's specific space needs and that when available; copies of the plans will be distributed to members.

Mr. McCann assured the Commission that efforts are being made to correct both budget and space deficiencies and that a report will be made concerning these problems. He asked members to approach leadership to ask for the tools needed for the Commission to fulfill its duties.

The Commission then invited the Chair to serve with Mr. Ezhaya and Mr. Beyer on the Fair Campaign Practices Subcommittee. Accepting the appointment, Mr. McCann informed members that he would soon schedule a meeting of the group.

NEW BUSINESS

The Commission then turned its attention to a complaint filed by Mr. Mark Anthony alleging that candidate Peter Danton's designation of State Senator on campaign literature is misleading because Mr. Danton is not an incumbent. Members agreed that the designation -- while not illegal -- may be misleading and staff was thereupon directed to advise Mr. Danton accordingly. It was suggested that such complaints be referred to the Fair Campaign Practices Subcommittee.

In response to a query posed by a candidate for state office, the Commission determined that a candidate need not reprint signs and other printed materials to delete the name of a treasurer who resigns during the campaign.

The Commission recessed for lunch at 12:45 p.m., resuming deliberations at 1:30. p.m.

The first matter reviewed in the afternoon session was a request by Mr. Charles Cragin of the Republican National Committee for an investigation of certain financial activities of the Brennan for Governor Committee. The request included allegations that the Brennan for Governor campaign accepted contributions from the Brennan for Congress Committee in excess of the legal limit; that the Brennan for Governor Committee failed to report the contributions; and that the Brennan for Governor Committee failed to register in a timely manner under the Maine Campaign Reports and Financing Act.



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Mr. Cragin addressed the Commission briefly, designating as his counsel Mr. Joseph Groff. First, Mr. Groff questioned the propriety of an alleged transfer from the Brennan congressional committee to the Brennan gubernatorial committee of computer equipment. Next, he asserted that surveys conducted by one political entity (Brennan for Congress Committee) and turned over to another legal entity (Brennan for Governor Committee) constituted a transfer. He then proposed that the issues pending included whether the information transferred has intrinsic value, how that value is to be measured, and whether the value of the surveys exceeded the contribution limitations. Finally, Mr. Groff discussed possible long term ramifications of the Commission's ruling that the "transfer" of funds from the Brennan for Congress Committee to the Brennan gubernatorial campaign is permissible under 21-A MRSA 1015(4). Mr. Groff's view was that the ruling creates a potential for groups such as the Republican National Committee to offer to donors the option of retroactively earmarking, for other campaigns, contributions already made to the RNC.

Mr. Gerald Petruccelli was present and represented the Brennan for Governor and Brennan for Congress Committees. In his view, the "computer issue" had been resolved with the correcting of technical errors on Mr. Brennan's gubernatorial and congressional reports. He defended Mr. Brennan's right -- as a sitting Congressman -- to conduct polls, calling attention to the fact that they were fully disclosed on Mr. Brennan's congressional report. He emphasized, finally, that funds earmarked for the Brennan gubernatorial campaign were duly reported in accordance with both federal and state law.

At the request of the Chair, Assistant Attorney General Stokes offered counsel on the issues at hand. It was Mr. Stokes' view that issues relating to the purchase of computer equipment had been resolved; that there is no indication that the polls conducted by the Brennan congressional committee constitute a contribution to the Brennan gubernatorial committee; hence, State registration requirements do not apply; and that polls conducted by Congressman Brennan were duly reported on his Congressional reports. Finally, in reference to Mr. Groff's remarks, Mr. Stokes -- clarifying the Commission's position on the earmarking of funds -- asserted that the Commission had not authorized the transfer of funds from one committee to another, but rather, had ruled it permissible under 21-A MRSA Section 1015(4) for donors to a political committee to earmark their contributions for another political committee, provided that such contributions counted toward each donor's contribution limitation.

Mr. Ezhaya then moved that no further investigation of the matter be made. Mr. Cyr seconded the motion.

In response to an inquiry by Mr. Beyer, Mr. Stokes explained that amendments to the Brennan for Governor Committee included itemization of \$11,550 in expenditures for a computer system -- a transaction erroneously reported on a previous Brennan Congressional report; and reporting of an additional \$11,596 in contributions earmarked for the Brennan for Governor Committee through the conduit Committee, Brennan for Congress, the latter transaction having been overlooked earlier due to an inadvertent accounting error.



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There followed 6 lengthy discussion of the following aspects of the survey issue: the format and amount of survey materials; their potential worth; the rapid decrease in the value of the information; and who, if anyone, should determine the value of the polls if deemed to be contributions. Mr. Beyer suggested that determination of the polls' value may be a function more properly exercised by the Brennan for Governor Committee than by the Commission.

Mr. Ezhaya then reiterated his motion that the Commission pursues no further investigation of Mr. Cragin's complaint, Mr. Cyr restating his motion to second. The motion carried unanimously. Mr. Pierce asked whether the Commission planned a review of questions raised by Mr. Groff regarding the earmarking of funds. Mr. McCann answered in the affirmative.

Finally, the Commission considered a complaint filed by Mr. Mark Usinger alleging that his opponent and another member of the Legislature had violated ethics laws in using for political purposes a facsimile of legislative stationery carrying the state seal. Ms. Canavan reported that Maine law prohibits the use of the state seal only where used for commercial purposes and that the law is silent on whether legislative stationery may be used for political purposes.

Mr. Stokes stressed that the complaint was brought before the Commission for informational purposes only -- the Chair, Director and Counsel together having determined that the matter did not fall within the jurisdiction of the Commission. Mr. Cyr moved, and it was seconded, that no further action be taken on the matter. The motion carried unanimously.

Mr. Pierce then asked the Commission to consider review of the following issues at its next meeting: earmarking of funds, the distinction between a candidate committee and a political action committee, and bundling of political contributions. He suggested that other members may wish to submit topics for inclusion on the agenda. Mr. Cragin asked to be informed of the next meeting date.

Because of the Labor Day weekend, the meeting previously scheduled for September 4th, 1990 was tentatively rescheduled for September 11th, 1990.*

Mr. McCann indicated that the Commission's Subcommittee will hold a meeting in the interim to discuss some of the aforementioned issues.

The meeting was adjourned at 3:25 p.m.

Respectfully submitted,

Marilyn Canavan, Director

*The meeting was later rescheduled for September 18th, 1990.