



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

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**December 17<sup>th</sup>, 1997**

Minutes of the December 17<sup>th</sup>, 1997 meeting of the Commission on Governmental Ethics and Election Practices held in Room 122, State Office Building, Augusta.

Present: Chairman Peter B. Webster; members Linda W. Cronkhite, Harriet P. Henry, G. Calvin Mackenzie, Merle R. Nelson; Commission Counsel Phyllis Gardiner; Director Marilyn Canavan

Chairman Webster called the meeting to order at 9:00 a.m. A motion was then made and seconded to approve the minutes of the November 12, 1997 meeting as written.

Next, under old business, the Commission voted to remove from the table the letter of complaint of Mr. Matt Anson in which it was alleged that the Democratic Legislative Campaign Committee (DLCC), a Virginia-based organization, was late in filing several required reports. Staff findings indicated that the reports in question listed a total of \$150,000 in transactions, all of which represented contributions to Maine candidates and committees. Findings further showed that DLCC officials had produced a UPS record as proof of the timely filing of its December 6, 1996 report, but that a certified mail receipt provided by DLCC as evidence of other filings was not signed by any Commission staff member.

Questioned as to whether the reports had arrived on time, Ms. Canavan responded in the negative with respect to all but the December 6 report. She said that DLCC officials filed the other reports after learning of Mr. Anson's complaint.

Mr. Anson was present and asked permission to address the Commission. He discussed the lateness of the reports; then digressing, claimed that two of the donee's listed in DLCC reports, "Win in '96" and "Victory '96" were unregistered committees. He said that when he approached the Executive Director of the Maine Democratic Party (MDP) about the entries, he was told that "Win in 96" and MDP were one and the same entity. He then pointed out that the use of pseudonyms made it difficult for those reviewing the reports to "follow the money."

After a brief discussion of the allegations, Mr. Mackenzie moved, and Ms. Nelson seconded, that the complaint be dismissed on the basis that DLCC officials had made a good faith effort to file the reports.

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As part of the motion, the staff was directed to contact State Democratic party officials and to inquire as to whether "Win in '96" and "Victory '96" were offshoots of the State party committee, and if so, whether the committees have separate, segregated funds; and to provide the Commission with guidance as to whether the statute prohibits the use of pseudonyms in reports. The motion was voted 4-1. Ms. Nelson opposed, stating that it was her view no further information was needed.

Next, the Commission voted to remove from the table agenda Item #3: the financing of Ms. Annette Hoglund's 1996 election campaign through bingo fund-raisers. Staff findings indicated that Ms. Hoglund had reported only a small fraction of the amount collected by her campaign committee in staging the games. At issue was whether the income was reportable in its entirety. Mr. William Cote was present and represented Ms. Hoglund.

He asserted that Ms. Hoglund's committee had satisfied legal requirements by reporting to the Commission the surplus realized from the games; that receipts from bingo need not be reported in their entirety.

Asked to define the term "surplus funds" in the context of the Committee's accounting procedures, Mr. Cote said that whatever remains after prizes are paid and overhead expenses met are considered to be surplus funds. He then asserted that the funds realized from the sale of tickets are not reportable, in any event, because they do not fit within the legal definition of "contribution;" i.e. .... a deposit ... made for the purpose of influencing the nomination or election of any person to. . .office . . ." He said those purchasing tickets do so to play bingo, not to influence the outcome of an election." At that point, Counsel Gardiner advised that the language cited by Mr. Cote could as easily be construed to mean the candidate's intent; that seen in that perspective, funds derived from games would be reportable if the purpose of the candidate in staging the games is to support her candidacy.

Ms. Annette Hoglund was present and rose to address the Commission. She said that she and her treasurer had checked with the Commission staff as to how the reports should be completed; that "we reiterated to all of our knowledge the best and proper way of doing it; that we proceeded in that manner and filled them (the reports) out in that manner." She said she would gladly amend her reports if the Commission saw fit, but that she "personally believed" she had "done it right." Asked if her purpose in staging the games was to support her candidacy, Ms. Hoglund replied in the affirmative.

Both Ms. Alison Smith, of the League of Women Voters, and Mr. Arne Pierson of the Money in Politics Project were present and addressed the Commission concerning the case, each urging that the Commission demonstrate its support for full and meaningful disclosure by requiring that all funds received by a campaign committee -- whether through fund-raisers or other means -- be reported in their entirety.

Following a lengthy discussion of the issues involved, Mr. Mackenzie moved, and Ms. Nelson seconded, that the Commission accept the staff recommendation; i.e., that all of the funds received and all of the expenditures made by Ms. Hoglund's campaign committee in connection



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with the staging of bingo fund-raisers are reportable contributions and expenditures; that accordingly, Ms. Hoglund be directed to report the transactions to the Commission in their entirety. He suggested that the Commission wait until the reports were filed to decide whether a penalty was warranted. The motion was voted.

At 10:05 a.m. the Commission recessed briefly and, on reconvening, voted to remove from the table agenda Item #4: the complaint of Citizens for Sustainable Forest and Forest Jobs (CSFFJ) against Ms. Karen D'Andrea.

The complainant alleged that Ms. D'Andrea had violated the attribution law by failing to state on a press advisory the name and address of the person who paid for and authorized the Communication. When it was learned that the complaint was originally filed on behalf of S.D. Warren Company, Mr. Webster asked, and was granted permission to be excused because of a potential conflict of interest, and Mr. Mackenzie assumed the role of Chair pro-tem.

Staff findings showed that the Commission had dismissed a similar case the previous year, ruling that the cost of a press release is exempt from the attribution requirements under 21-A M.R.S.A. Section 1052(4)(B)(1). Mr. Manahan was present and represented CSFFJ. He argued that the communication was not exempt because it was not distributed through any of the methods cited in Section 1052(4)(3)(1); i.e., through the facilities of a "broadcasting station, newspaper, magazine or other periodical publication." He further asserted that the communication could more accurately be deemed to be a flyer; that the law requires that flyers contain attribution; that since the communication contained none, it was in violation of 21-A M.R.S.A. Section 1055.

Mr. Jonathan Carter was present and spoke on behalf of Ms. D'Andrea. He asserted that the law was unclear and confusing and claimed that many groups had distributed press releases that lacked attribution. Counsel Gardiner then expressed the view that the communication undergoing review did not fall within the news story exemption; that it contained all the elements of a political communication; that it was therefore subject to attribution requirements. Thereupon, Ms. Nelson moved and Ms. Cronkhite seconded, that the Commission find the communication in violation of Section 1055. At that point, Ms. Henry, noting that the Commission had reversed its previous stance, suggested that the Commission waive the penalty on condition that the behavior not be repeated. With that addition, the motion was voted unanimously.

Next, the Commission voted to remove from the table agenda Item #5: the complaint of Mr. Matthew Manahan on behalf of CSFFJ against the group known as Forest Ecology Network (FEN). The complainant alleged that FEN had circulated a political communication that lacked attribution; that the cost of the communication exceeded \$50, the threshold triggering registration for a political action committee; that the group had failed to register as a PAC; that it was therefore in violation of 21-A M.R.S.A. Section 1004 which states that "no political action committee . . . may operate in this State. . . unless it is . . . registered. "

Mr. Manahan then rose to address the Commission concerning his complaint. He reminded members that a violation of Section 1004 constitutes a Class E crime; that the law did not distinguish between innocent violations and violations that were knowingly done with respect to



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PAC registration requirements; that hence, however unwitting the failure of FEN officials to register, the Commission had no choice but to refer the matter to the Attorney General.

At that point, Mr. Jonathan Carter asked, and was granted, permission to address the Commission. He held that the issue of "express advocacy" was central to the case undergoing review; that the courts had ruled that only those political communications that "expressly advocate" the promotion or defeat of a question could be regulated; that the document undergoing review did not contain express advocacy; and that FEN officials had carefully crafted the language in the flyer so as to avoid using language that could be so construed. He contended that the primary purpose of the flyer was to solicit members for the group, not to oppose a ballot issue.

Mr. Manahan then contended that the question of whether the communication contained express advocacy did not bear on the issue of whether the cost of the flyer was a reportable expenditure. He held that it was entirely possible for a communication to fail the "express advocacy" test and, at the same time, meet the standard in 21-A M.R.S.A. Section 1052 which defines a reportable "expenditure."

Counsel Gardiner then explained the origin and evolution of the doctrine of "express advocacy." She said that some years ago, the Supreme Court had examined language in the federal election statute that was similar to Maine's definition of expenditure; i.e., "a purchase . . . made for the purpose of influencing the outcome of an election" and had determined that the language was overly broad and unconstitutionally vague; that, consequently, the courts had established a bright line test for determining whether a communication was made for the purpose of influencing an election; and that the bright line test had come to be known as the principle of "express advocacy." She said the court had actually listed in the ruling certain "magic words" that would have to appear in a communication in order for it to be construed as "express advocacy"; that among these words were: "vote for," "elect," "support," "I cast your vote for or against," "Smith for Congress." She then advised that the Commission apply the concept of express advocacy to the issue undergoing review; and that it engraft the concept onto registration requirements in determining whether FEN is in violation of PAC requirements, since the cost of the communication was the only activity that would make FEN a PAC.

Mr. William Sugg was present and addressed the Commission on behalf of FEN. He said the group had gone to considerable lengths to avoid crossing the "bright line" established by the courts, and suggested that if the Commission were to ignore the test, other groups would have difficulty understanding where to draw the line.

Following a lengthy discussion of the issue, it was decided to table the item for the moment.

The Commission then turned its attention to the complaints of CSFFL against Caremi Partners Limited (CPL), a corporation which had donated to both the Ban Clearcutting Committee (BCC) and the Vote No on 1 Committee (VNPAC); and Mr. Donald Sussman, an officer of CPL.



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The issues raised in the complaints were:

- 1) whether Mr. Sussman had made a contribution in the name of CPL,
- 2) whether CPL had knowingly permitted its name to be used to accomplish such a contribution,
- 3) whether the activity of CPL constituted that of a political action committee and
- 4) whether an open letter Mr. Sussman had published was in violation of attribution laws.

At the conclusion of the Commission's review of the staff findings, Mr. Manahan again addressed the Commission. He produced two news articles in which Mr. Sussman was quoted and contended that if the articles were true, they constituted sufficient evidence to show that Mr. Sussman may have tunneled funds through CPL to both BCC and VNPAC. With respect to Mr. Sussman's open letter, he argued that the content of such would lead a reasonable person to believe that the communication was intended to persuade voters to vote against a ballot issue; that the communication did not state who authorized and paid for it; that the communication was therefore in violation of the attribution law. He said that since the letter was published in various newspapers throughout the state, a penalty should be exacted for each communication found in violation. He further contended that since the expenditure for the communications was substantially more than \$50, Mr. Sussman was subject to the PAC registration requirements.

Mr. Peter Bickerman was present and represented both CPL and Mr. Sussman. He held that the evidence provided by Mr. Manahan -- i.e., two news stories -- did not constitute sufficient evidence to indicate that an investigation was warranted. He then pointed to the letters submitted by Mr. Warmflash, an officer of Caremi, in which Mr. Warmflash had affirmed that no money was tunneled through Caremi; that Caremi had simply drawn from its assets to contribute to both BCC and VNPAC.

The Commission recessed at 12: 35 p.m. and reconvened at 1: 10 p.m.

Thereupon, a lengthy discussion ensued on the issue of express advocacy and whether the concept could be properly applied with respect to the FEN communication. At the conclusion of the discussion, Ms. Henry moved that the Commission reconsider its motion whereby it ruled that the cost of the communication circulated by FEN was a reportable expenditure. Mr. Mackenzie seconded, and the motion was voted. Mr. Mackenzie then moved that the Commission dismiss the complaint of CSFFJ against FEN on the basis that the communication in question contained no express advocacy; that additionally, it dismisses the claim that FEN was an unregistered PAC. The motion was seconded and voted.

Mr. Mackenzie then moved that the Commission dismiss the complaint of CSFFJ against Mr. Donald Sussman on the basis that the communication published by Mr. Sussman contained no express advocacy. The motion was seconded and voted.

Ms. Henry then moved that the Commission dismiss the complaints of CSFFJ against CPL and Mr. Sussman with respect to PAC registration requirements on the basis that the evidence brought was insufficient to show that a violation had occurred. Ms. Nelson seconded, and the motion was voted.



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Next, the Commission considered the complaints of CSFFJ against both BCC and VNPAC in which it was alleged that both BCC and VNPAC had failed to properly report the address of a major contributor: CPL. Mr. Manahan addressed the Commission concerning the allegations. He said that reports filed with the Commission showed that CPL had contributed substantial amounts to both BCC and VNPAC; that the address of CPL as shown in the reports was the address of the firm of Sexter and Warmflash (New York); that the reports were misleading since CPL's corporate filings showed the organization was based in Delaware.

During the discussion that ensued, it was learned that Mr. Warmflash was an officer of CPL. Additionally, a review of the reporting requirements revealed that disclosure of a contributor's mailing address satisfies the statute. On those facts, the Commission concluded that both BCC and VNPAC had complied with the law in disclosing the business address of CPL. Accordingly, Mr. Mackenzie moved to dismiss the complaint. He proposed additionally that the Commission recommend a change to the Legislature clarifying and strengthening the requirement. The motion was seconded and voted.

Next, the Commission considered the complaint of CSFFJ against Citizens to Protect Maine's Future (CPMF) in which it was alleged that CPMF had published a number of political advertisements that failed to comply with attribution requirements. Speaking on behalf of CSFFJ, Mr. Manahan pointed out that each of the ads contained express advocacy; that the ads appeared in 38 separate newspaper editions; that four separate ads were published; that CPMF should therefore be penalized for at least four separate violations.

Mr. John Demos was present and represented CPMF. He acknowledged that the PAC had erred in failing to properly attribute the ads and assumed full responsibility for the errors. But he said that vendors hired by CPMF to print the ads, were also culpable, having overlooked the deficiency when they produced the final version. He said that he failed to pick up the omission in proofreading, but that he made corrections after seeing the ads in print.

After a brief discussion, members agreed that while a penalty was in order, leniency might be shown in light of the fact that a good faith effort was made to correct the ads. Thereupon, Mr. Mackenzie moved, and Ms. Cronkhite seconded, to find CPMF in violation of the attribution law but to impose a fee of only \$100. The motion was voted 3-0-1. Ms. Nelson opposed the motion, persuaded that a \$400 penalty was warranted.

The Commission then considered agenda Item #1 a Commission complaint against the Maine Pulp and Paper Forest Information Program PAC (FIP).

At issue was whether the PAC's October quarterly report was in substantial conformance with the law in light of the fact that it failed to disclose a total of \$12,126.28 in in-kind contributions/expenditures in a timely fashion. Findings showed that the transactions were reported in an amendment filed ten days after the due date.

Mr. Manahan addressed the Commission on behalf of FIP. He asserted that FIP's October report



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contained all of the elements required by the law; that the amount not timely disclosed represented only a small percentage of the amount collected/spent by the PAC during the filing period; that the penalty was wholly out of proportion to the error, which was corrected immediately upon discovery. Ms. Henry moved, and it was seconded, that the penalty accrued, \$1,213.70, be reduced to \$500. The motion was seconded and voted 3-2, Ms. Nelson and Ms. Cronkhite opposing.

Next, the Commission voted to table Item #10: the complaint of Maine Citizens for Jobs and Safety (MCJS) vs. Natural Resources Council of Maine. It was noted that MCJS had withdrawn the complaint the day before the meeting.

The next item to undergo review was the request of lobbyist David Maskewitz for relief from the penalty assessed him for a late monthly disclosure report. Mr. Maskewitz was present and represented himself. He said that prior to the filing deadline, he was out of state on business; that on the deadline date, he was visiting with his father who had suffered a heart attack; that immediately upon returning to Maine, he telephoned the Commission office and filed the report. On those findings, Ms. Henry moved, and it was seconded, to waive the penalty. The motion was voted.

Next, the Commission considered agenda Item #1713: the late report of AMI-ME for 5 PAC (AMI). Mr. David Sturtevant was present and represented AMI. He said that AMI was a grass roots organization; that, hence, none of the members were well versed in the law; that the entire budget for the Committee was \$4,290; that the group had missed the filing deadline because of communication problems within the organization. He ended saying it would be difficult for the group to pay the penalty accrued, given its meager budget. At the conclusion of Mr. Sturtevant's remarks, Mr. Mackenzie moved, and it was seconded, to assess a penalty of \$99; Le, 50 percent of the penalty incurred.

The Commission then reviewed the bids submitted in response to the Commission's published request for proposals. It was noted that six candidates had bid on the facilitator contract and three on the drafting contract. Ms. Henry commenced by explaining the methodology she had employed in rating the candidates based on cost and experience. Thereupon Ms. Canavan outlined the procedures she and her staff had followed in ranking the candidates based on cost, experience, and the interview process. After a lengthy discussion of the results, it was agreed to combine the staff figures with those of Ms. Henry, arrive at an average, and award the contracts to the bidder with the highest average. On that basis, Ms. Hotch was declared low bidder for the facilitator position and Gosline et al low bidder for the drafting contract. Accordingly, it was moved, seconded and voted that the contracts be awarded to those candidates.

Next, the Commission turned to Item #18: a legislative proposal by the Maine Association of Broadcasters (MAB). Ms. Suzanne Goucher was present on behalf of MAB. She explained the reason for the proposal, saying a change in the law in 1996 had the effect of lengthening an attribution requirement which was already overly burdensome. She said the result, from the perspective of MAB, was to force advertisers on both the TV and radio side to buy substantially more time just to comply with attribution requirements. She explained that MAB's proposal

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would have the effect of abbreviating the attribution statement without weakening the law. She said her purpose in bringing the MAB proposal to the attention of the Commission was simply a matter of a courtesy.

There being no questions or comments, the Commission turned to the next agenda item: the request of lobbyist Karen Geraghty for relief from the penalty assessed her for a late lobbyist disclosure report. Findings showed that Ms. Geraghty had filed late once before, in 1995. On those findings, Mr. Mackenzie moved, and it was seconded, that the full penalty be assessed. The motion was voted.

The Commission then considered the request of NFIB PAC for relief from the penalty assessed for its late October quarterly report. The staff reported that NFIB had filed late on two prior occasions. On those findings, Mr. Mackenzie moved, and it was seconded, that the full penalty of \$125 be assessed. The motion was voted.

Next, the Commission considered the request for relief of Ms. Belinda Gerry, treasurer of On Our Terms PAC. Findings showed the PAC filed its October quarterly report 5 calendar days late, thereby incurring a penalty of \$375.60. Findings further indicated the PAC had no prior violations. A letter from Ms. Gerry indicated she had misunderstood the instructions in the Commission's letter. It was the consensus of members that the excuse did not fit within the definition of "mitigating circumstances," set forth in 2 I-A M.R.S.A. Section 1062-A. Thus, it was moved, seconded, and voted to assess the PAC the full penalty incurred.

The Commission then heard the report of Mr. Mackenzie on the status of electronic filing. He said that Mr. Raymond had contacted the Commission office and suggested that members of the Legislature be invited to a demonstration of the software being developed. He then suggested that any parties closely affected by electronic filing be invited to attend the demonstration. At the conclusion of his remarks, it was agreed to schedule the demonstration on the date of the next Commission meeting: January 14<sup>th</sup>, 1998.

Next, there was a brief discussion of the staff's workload. It was suggested that a closing date be established for agenda items; that the closing date be 8 business days prior to a meeting; that the policy be strictly adhered to unless a complainant or other person seeking an advisory opinion could demonstrate to at least three of the members a valid reason for exception. The suggestion was moved, seconded, and voted.

Ms. Cronkhite then moved that the Commission discuss at a future meeting the method whereby penalties are assessed. The motion was seconded and voted.

Next to undergo review were agenda items #16A and #16B: the requests of lobbyists Scott Riehl and Kimball Kenway for relief from penalties assessed them for late monthly disclosure reports. Findings showed that each had filed late once before. On that basis, it was moved, seconded, and voted to assess each the full penalty incurred; i.e., \$100.



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Next to undergo review was the request of lobbyist Robert Hanson for relief from the penalty assessed him for a late lobbyist disclosure report. It was recommended that Mr. Hanson's request be granted, this being his first violation. At that point, Mr. Webster recused himself and thereupon a motion was made, seconded, and voted 4-0, to accept the staff recommendation.

The next item to be considered was the request of Maine Citizens for Access, Safety and Independence PAC for relief from the penalty assessed for its late pre-election report. The staff recommended that the penalty of \$656.57 be reduced by 50 percent, this being the PAC's first violation. It was moved, seconded, and voted to accept the recommendation.

There followed a discussion of the process whereby late filings and unpaid penalties are referred to the Attorney General's office. Counsel Gardiner said she intended to establish a tracking system; that when an item is referred to her, she will notify the offender, then report back to the Commission with the results.

At the conclusion of her remarks, the Commission turned to a discussion of the supplemental budget. Ms. Canavan reported that she had submitted a request for emergency funds on behalf of the Commission; that the funds would have allowed the Commission to hire her replacement on the effective date of her retirement; that the request was denied in the Governor's supplemental budget. There followed a discussion of the various options that might be exercised to resolve the problem, including the possible use of dedicated funds. Ms. Canavan said she would be examining several options in the near future and would report her findings back to the Commission.

The next item to be reviewed was the request of the staff for guidance on the question whether the use of a mailing address in an attribution statement satisfies legal requirements. On examining the relevant statutes; i.e., 21-A M.R.S.A. Section 1014 and 21-A M.R.S.A. Section 1055, members concluded that either the street address or the mailing address would satisfy the requirement. Hence, a motion was made, seconded, and voted to so advise the staff.

The Commission then discussed briefly the revised reporting forms prepared by the staff. The members agreed to take the forms home, review them, and contact the staff with comments and suggestions within a week.

Finally, Commission members discussed plans to seek a new director, Ms. Canavan having announced her intention to retire. Ms. Canavan explained briefly the differences between the "direct hire" and "in-state hire" in the context of the State hiring process. She suggested that the Commission attempt to get the status of the director's position changed to "direct hire" so as to allow the commission more flexibility in the selection process. She then agreed to send to members a copy of the director's job description and a list of the position's duties for review at the next meeting.

The meeting was adjourned at 4: 10 p.m.