



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

June 6, 2000

Minutes of the May 10, 2000, meeting of the Commission on Governmental Ethics and Election Practices held in the Maine Labor Relations Board Hearing Room, PUC Building, 242 State Street, Augusta, Maine.

Present: Chairman: Peter B. Webster; Members: Hon. Michael Carpenter, Hon. Virginia Constantine, and Ms. Linda W. Cronkhite; Director William C. Hain; Counsel Phyllis Gardiner; and Commission Assistant Diana True.

Absent: Member: Hon. Harriet P. Henry.

Chairman Webster called the meeting to order at 9:00 a.m.

In keeping with its practice of addressing agenda items to accommodate those personally present first, the Commission considered items on the published agenda as follows:

Agenda Item #2: Natural Resources Council of Maine: State Representative Henry L. Joy requested the Commission on March 2, 2000, to provide information regarding lobbyist disclosure procedures and to conduct a formal investigation into the lobbying practices of the Natural Resources Council of Maine (NRCM). Mr. Hain summarized the actions taken to date in preparation for the Commission's consideration of this matter that was tabled from the April meeting pending a review by Commission staff of amended reports submitted by the Council.

Members inquired regarding the review of the Council's disclosure reports and Mr. Hain advised that the amended reports appeared to be in compliance with the statutory requirements, but that a complete audit of all of the Council's records had not been performed. Chairman Webster asked whether a further audit of Council records was warranted and Mr. Hain responded that in his opinion nothing disclosed in the amended reports suggested any reason to perform a more detailed audit.

Ms. Constantine noted that the amended reports included as many as 25% more bills than the original report and asked the Council representatives if they were concerned about that significant amount of omission from the original disclosure. Mr. Tim Glidden, on behalf of NRCM, responded that the Council's system is under reviewed, but that it captures data to serve both the Federal and State lobbyist reporting requirements which are different. He indicated that the Council will be focusing on the technical errors that have been identified and will focus more attention in the future on the differences in the reporting requirements between the Federal and State agencies.

Mr. Carpenter noted the legitimate issues raised by Representative Joy in bringing this matter to the Commission's attention and inquired whether this particular problem is reflective of a larger problem. Mr. Hain responded that the extent of any "underreporting" is unknown, but that with

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the presence of new auditing capabilities on the staff, filers have been notified that random audits will be conducted in the future. Mr. Carpenter stated that the amount of lobbying activity is significant and increasing and, therefore, the kind of review generated by an audit is healthy to keep the system functioning properly. He stated that the system now seems to work well, but that it must periodically be reexamined to ensure its continued proper functioning.

After further, brief discussion relating to the larger issues of lobbying regulation and enforcement that are more within the purview of the broader concerns raised by Representative Daigle, Ms. Constantine moved, Ms. Cronkhite seconded and the Commission voted unanimously to dismiss the complaint against the Natural Resources Council of Maine.

Chairman Webster noted his support for the previous suggestion regarding Representative Joy's service to the Commission, as well as to the Natural Resources Council of Maine, by bringing this matter to the Commission's attention.

Agenda Item #3: Request for "Lobbying" Clarification: Representative Robert A. Daigle, by letter dated March 10, 2000, requested the Commission's clarification of the definition of "lobbying" and an interpretation of that definition to its application regarding certain scenarios presented for the Commission's consideration. After discussing the Commission's 1995 attempt to clarify the definition of "lobbying" and its proposal for a legislative solution at the April meeting, the Commission tabled further consideration of Mr. Daigle's request pending preparation by Mr. Hain of a summary of the advice the Commission staff periodically gives in response to inquiries regarding lobbyist disclosure.

The Commission approved the summary of advice prepared by the staff and agreed to the placement of that document on the Commission's Internet web site for public reference. After further discussion of how best to proceed with regard to addressing the issue of interpreting the definition of "lobbying" with the Legislature, Ms. Constantine suggested that the Commission study the issue during the summer and be prepared to recommend a course of action to the newly elected Legislature in time to include at least the title of proposed legislation before cloture in December. Reaching agreement on that point, the Commission concluded that the matter should be tabled pending further consideration on the September meeting agenda.

Agenda Item #1: Ratification of Minutes: Ms. Constantine moved, Ms. Cronkhite seconded, and the Commission voted unanimously to approve the minutes of the April 5, 2000, meeting, as distributed.

Agenda Item #4: Representative Roger D. Frechette: Mr. Hain reviewed the background of the late submission by Representative Frechette of his Statement of Sources of Income and Liabilities that was due on February 15, 2000, but not filed with the Commission until March 31, 2000, including the requirement of the statute that the Commission must determine whether Mr. Frechette "willfully" failed to submit his report on time as a precondition to the assessment of a penalty. Mr. Carpenter referred to the date of March 1, 2000, as some evidence of the

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appearance of a willful failure to file on time. Questions were raised regarding whether the conflict of interest provisions apply once the report is received, to which Mr. Hain responded, and Counsel Gardiner agreed, that they did not. The Commission's penalty authority extends to the assessment of a monetary penalty not to exceed \$1,000 in the event of a Commission finding that the late submission had been willful.

After discussion, Mr. Carpenter moved, Ms. Constantine seconded, and the Commission voted unanimously to assess a penalty of \$500 against Representative Frechette for the willful failure to file his Statement of Sources of Income and Liabilities on time.

Agenda Item #5: Representative Edward R. Dugay: Representative Dugay requested a Commission determination of a penalty for the late filing of his January 2000 Campaign Finance Report. Mr. Hain reviewed the factual background of the materials presented to Commission members, including the "mitigating circumstances" presented by Mr. Dugay's treasurer. Chairman Webster questioned why, if the treasurer's problem had been known since December 1999, the candidate had not done something to find someone else to file the report, or do so himself, since both the candidate and the treasurer have a joint responsibility for the submission of campaign finance reports. Ms. Constantine noted that the ultimate responsibility is that of the candidate to ensure that the reports are filed. Thereafter, Ms. Constantine moved, Ms. Cronkhite seconded, and the Commission voted unanimously to assess a penalty of \$262.50 for the late filing of Mr. Dugay's January 2000 Semiannual Campaign Finance Report.

Agenda Item #6: Mainers for Medical Rights: Ms. Elizabeth A. Beane, Treasurer, requested a Commission determination of a penalty for the late filing of her PAC's April Quarterly Campaign Finance Report. Mr. Hain reviewed the factual background of the materials presented to Commission members, including the "mitigating circumstances" presented by Ms. Beane. After discussion of the facts cited by Ms. Beane, Ms. Constantine moved and Mr. Carpenter seconded to dismiss the matter and assess no penalty based on the mitigating circumstances cited. That motion failed on a vote of 1-3, Ms. Constantine in favor and all other members opposed. Thereafter, Mr. Carpenter moved, Ms. Cronkhite seconded, and the Commission voted 3-1 (Ms. Constantine opposed) to assess a penalty of \$221.90 for the late submission of the PAC's April Quarterly Campaign Finance Report.

Agenda Item #7: Referrals to Attorney General: Mr. Hain reviewed the status of non-filers of campaign finance reports and unpaid penalties, following which Ms. Cronkhite moved, Ms. Constantine seconded, and the Commission voted unanimously to refer those non-filers and unpaid penalties presented by Mr. Hain to the Attorney General's office for appropriate action. Those include the non-filing of January 2000 semiannual reports by Mr. William Bodwell and Mr. John Wade, and the unpaid penalty of \$23.94 by Mr. Robert A. Peabody.

Agenda Item #8: Informational Items: Mr. Hain reviewed the status of legislation amending the definition of "political action committee" (LD 2663) and reducing lobbyist registration fees (LD 1504). He also briefed members regarding the status of electronic filing and Maine Clean Election Act implementation.

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Agenda Item #9: Other:

(A) Independent Expenditures: Mr. Hain addressed the problem of how best to inform the public regarding the requirement to report independent expenditures to the Commission. The failure to receive timely reports of independent expenditures that may benefit a non-participating candidate may adversely impact the eligibility to receive matching funds by a competing Maine Clean Election Act candidate. The Commission authorized Mr. Hain to issue a press release and letter to political action committees that had been drafted.

(B) "Leadership PACs" and MCEA Candidates: Mr. Hain raised a question that had been presented regarding the propriety of candidates for the Legislature who is running under the Maine Clean Election Act also being associated with a so-called "leadership PAC" for the purpose of raising money to assist the election of other, non-participating candidates. The Commission had not had sufficient prior notice of the issues and advance information upon which to make an informed decision. Consequently, the matter was tabled for further consideration at the June meeting. Mr. Hain was directed to inform appropriate legislative leaders of the topic and invite their participation in the Commission's consideration of the issues.

(C) Legislator Conflict of Interest Question: A Legislator inquired regarding whether it would be a conflict of interest to accept a paid position with a corporate entity over which the committee on which the Legislator had served had some legislative oversight. Chairman Webster recused himself from discussion of the issue because of a possible conflict of interest. The Commission had insufficient information upon which to base an informed decision, but generally agreed that nothing in the ethics statutes precludes any particular employment, but that such employment may impact upon the legislation on which the Legislator may be permitted act in the future.

(D) Write-In Candidate Eligibility for MCEA Certification: Mr. Hain presented the request for a Commission determination regarding the eligibility of a successful write-in candidate in the primary election to request certification as a Maine Clean Election Act candidate for the general election. Since there is no provision in the statute or the Commission's rules, Mr. Hain analogized the situation to that of a replacement candidate requesting certification after the primary election. In that case the qualifying period provision in the Commission's rules would apply. Following brief discussion, the Commission agreed that the same provisions that apply to a replacement candidate following the primary election should be applied to the MCEA candidate eligibility of a successful primary write-in candidate.

There being no further business, on motion and unanimous vote, the Commission adjourned at 11:10 a.m.

Respectfully submitted,

William C. Hain, III  
Executive Director