



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

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April 17th, 2002

Minutes of the April 17th, 2002, meeting of the Commission on Governmental Ethics and Election Practices held in Room 202, Second Floor, Cross State Office Building, Augusta, Maine.

Present: Mr. Alan Harding of Presque Isle, Hon. Andrew Ketterer of Madison, Hon. David Ott of York, and Hon James Donnelly of Brewer, Members; Director William C. Hain, III; Counsel Phyllis Gardiner, Esq.; and Commission Assistant Kendra Danforth.

At 10:30 a.m., Mr. Hain introduced Dedimus Justice Donald R. Wismer of the Department of the Secretary of State for swearing in the new Commission Members as required by 1 M.R.S.A. §1002(1-A).

Mr. Ketterer assumed the position of Acting Chair for electing a new Commission Chair as required by 1 M.R.S.A. §1002(1-A). Mr. Donnelly nominated Mr. Harding to be the new Commission Chair pending confirmation of a fifth Member. Mr. Ketterer seconded the nomination and Members voted unanimously to elect Mr. Harding Commission Chair. Mr. Harding expressed his appreciation and assumed the duties of Commission Chair. Thereafter, the Commission considered items on the published agenda as follows:

Agenda Items #1 and #2: Ratification of Minutes

Mr. Hain commented that former Commission Chair Peter B. Webster had reviewed the minutes of the two previous meetings and concurred with their contents. Mr. Ketterer then moved, Mr. Donnelly seconded, and Members voted unanimously to accept the Minutes of the February 13th regular and the February 15th telephonic special meetings of the Commission as submitted.

Agenda Item #3: Term Lengths for New Commission Members

The Commission acknowledged the publication by the Secretary of State of the lengths of terms for New Members determined by random lot drawing on April 8th, 2002 as follows: Mr. Harding – 1 year term; Unenrolled (not yet appointed) Member – 1 year term; Hon. Andrew Ketterer – 2 year term; Hon. David Ott – 2 year term; Hon. James Donnelly – 3 year term. Hereafter, new appointees will serve a 3 year term.

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Agenda Item #4: Status of Pending Legislation

Mr. Hain reviewed the status of LD2169, "An Act to Ensure Proper Disbursement of Matching Funds Under the Maine Clean Election Act," and LD2183, "Resolve, Regarding Legislative Review of Chapter 3: Maine Clean Election Act and Related Provisions Amendments, Major Substantive Rules of the Commission on Governmental Ethics and Election Practices."

Agenda Item #5: Dennise D. Whitley, Lobbyist for American Heart Association New England Affiliate

The Commission considered the late filing of Ms. Whitley's joint lobbyist/employer registration with specific reference to her letter dated March 20th, 2002. Mr. Donnelly moved, Mr. Ott seconded and, following discussion, Commission Members voted unanimously to assess a \$100 penalty for the late filing of the lobbyist/employer registration.

Agenda Item #6A: Edward Willey, Lobbyist for AFSCME Council 93

The Commission considered the late filing of Mr. Willey's January lobbyist monthly disclosure report with specific reference to his letter dated March 4th, 2002. Mr. Donnelly moved and Mr. Ketterer seconded to assess a penalty of \$50. Following discussion, Messrs. Donnelly and Ketterer withdrew their motion and second thereto. Thereafter, Mr. Donnelly moved, Mr. Ketterer seconded, and Commission Members voted unanimously to waive any penalty for the late filing of the January lobbyist monthly disclosure report based upon the mitigating circumstances explained in Mr. Willey's March 4th letter.

Agenda Item #6B: Martin I. Eisenstein, Lobbyist for Great Northern Paper, Inc.

The Commission considered the late filing of Mr. Eisenstein's January lobbyist monthly disclosure report with specific reference to his letter dated March 6th, 2002. Mr. Harding moved, Mr. Donnelly seconded, and following discussion, Members voted unanimously to waive any penalty for the late filing of the January lobbyist monthly disclosure report based upon the mitigating circumstances explained in Mr. Eisenstein's March 6th letter.

Agenda Item #6C: Christine G. Crocker, Lobbyist for Maine Indoor Air Quality Council

The Commission considered the late filing of Ms. Crocker's January lobbyist monthly disclosure report with specific reference to her letter dated March 26th, 2002. Mr. Donnelly moved, Mr. Ott seconded, and following discussion, Members voted unanimously to assess a penalty of \$50 for the late filing of the January lobbyist monthly disclosure report.

Agenda Item #7A: Kellie P. Miller, Lobbyist for Maine Osteopathic Association

The Commission considered the late filing of Ms. Miller's February lobbyist monthly disclosure report with specific reference to her letter dated March 19th, 2002. Mr. Donnelly moved, Mr. Ketterer seconded, and following discussion, Members voted unanimously to waive any penalty

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for the late filing of the February lobbyist monthly disclosure report based upon the mitigating circumstances explained in Ms. Miller's March 19th letter, and to express the sympathies of the Commission for the death of her stepson.

Agenda Item #7B: Sandra J. Mathieu, Lobbyist for Home Builders and Remodelers Association of Maine

The Commission considered the late filing of Ms. Mathieu's February lobbyist monthly disclosure report with specific reference to her letter dated March 26th, 2002. Mr. Donnelly moved, Mr. Ketterer seconded, and following discussion, Members voted unanimously to assess a penalty of \$50 for the late filing of the February lobbyist monthly disclosure report.

Agenda Item #7C: Catherine Gavin, Lobbyist for Maine Healthcare Purchasing Collaborative

The Commission considered the late filing of Ms. Gavin's February lobbyist monthly disclosure report with specific reference to her letter dated March 27th, 2002. Mr. Donnelly moved, Mr. Ketterer seconded, and following discussion, Members voted unanimously to assess a penalty of \$50 for the late filing of the February lobbyist monthly disclosure report.

Agenda Item #8: Ms. Betty J. Grant

Counsel Gardiner addressed the Commission's jurisdiction regarding Ms. Grant's letter dated March 15th, 2002, requesting investigation of allegations that Senator Michaud's chief of staff was running his Lewiston campaign headquarters while being paid with tax dollars. Counsel Gardiner explained that it is uncertain under State law which agency, if any, has jurisdiction regarding such matters, but that the Attorney General would be an appropriate State agent with whom to register such concerns for appropriate action. Mr. Ketterer then moved, Mr. Donnelly seconded, and Members voted unanimously to refer Ms. Grant's letter to the Attorney General for appropriate action and to notify Ms. Grant of the Commission's referral action based upon a lack of jurisdiction in the Commission to act on such requests.

Agenda Item #9: Mr. James F. Thiel

Mr. Ott moved, Mr. Ketterer seconded, and Members voted unanimously to grant a case-by-case exception authorized by the Commission's Chapter 3 Rules to Mr. Thiel based upon his letters received March 21st and April 2nd, 2002, requesting a waiver of the Maine Clean Election Act's qualification requirements regarding seed money restrictions. The exception was granted based upon Mr. Thiel's *bona fide* attempt to comply with the requirements as a first-time MCEA candidate and his full compliance with the requirements before his certification.

Agenda Item #10: Ms. Joyce M. Packard

Mr. Donnelly moved, Mr. Ott seconded, and Members voted unanimously to grant a case-by-case exception authorized by the Commission's Chapter 3 Rules to Ms. Packard based upon her



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letter dated March 26th, 2002, requesting a waiver of the Maine Clean Election Act's qualification requirements regarding premature expenditures. The exception was granted based upon Ms. Packard's *bona fide* attempt to comply with the requirements as a first-time MCEA candidate and her full compliance with the requirements before her certification.

Agenda Item #11: Rep. Glenn Cummings

Mr. Ketterer moved, Mr. Donnelly seconded, and Members voted unanimously to reduce Representative Cummings' general election initial distribution by \$5 based upon his letter dated April 8th, 2002, requesting a waiver of the Maine Clean Election Act's requirements as a result of having overspent his primary election initial distribution amount by \$5 due to an unintentional administrative error. The Commission declined to assess any penalty under 21A M.R.S.A. §1127(1), due to the relatively minor nature of the violation and the ability to offset the overspent amount.

Agenda Item #12: Rep. John Tuttle, Jr.

In response to Representative Tuttle's letter dated April 3rd, 2002, requesting the Commission to investigate the campaign ads being run by U. S. Term Limits in opposition to LD 1340, Mr. Donnelly moved, Mr. Ott seconded, and Members voted unanimously to respond to Representative Tuttle that the Commission lacks jurisdiction to take the action he requested in his letter.

Agenda Items #13A and #13B: Democratic Party Requests

Kurt W. Adams, Esq., on behalf of the Maine Democratic Party, addressed the Commission and requested that the items raised by his letter dated March 22nd, 2002 (Clean Elections Qualifying Contribution Records) and April 3rd, 2002 (Request for Advisory Opinion: Clean Elections Act) be withdrawn pending consideration at a later date. Mr. Ketterer then moved, Mr. Donnelly seconded, and Members voted 3-1 (Mr. Ott opposed) to table further consideration of the two agenda items indefinitely.

Agenda Item #13C: Democratic Party Request for Investigation: Carter for Governor

Kurt W. Adams, Esq., on behalf of the Maine Democratic Party, made an oral presentation and analysis of his letter dated April 5th, 2002, Mr. Carter's response dated April 7th, 2002 (received by the Commission on April 16th, 2002), and Attorney Adams' answer thereto dated April 17th, 2002. Thereafter followed a brief discussion of the form of the relief Attorney Adams was requesting the Commission to provide. Mr. Adams responded that he was requesting the Commission to undertake a significant investigation of the circumstances surrounding the 2001 Abacus Associates memorandum that Mr. Carter included with a seed money solicitation letter that he sent to supporters sometime in August 2001.

Mr. Jonathan Carter addressed the Commission in response to Mr. Adams' request. He explained the circumstances surrounding the acquisition and use of the memorandum at issue.



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He explained that he had not commissioned nor paid anything for the poll data referred to in the memorandum and that, by any standard, the data to which the memorandum referred was old and limited in value. He stated that two polls conducted in 1997 and 2000, both of which had been about forestry issues, each had contained no more than one question inquiring about how people being polled regarded him. Mr. Carter explained the process by which he used the memorandum to help him make a decision whether to run for political office and his registration with the Commission as a candidate thereafter.

Commission Members then conducted an extensive inquiry of Mr. Carter regarding his knowledge of the identification of the clients for whom the 1997 and 2000 polls were conducted, the conduct of the polls by Abacus Associates, the analysis of the polling data, the preparation of analytical reports, Mr. Carter's acquisition and use of the questioned memorandum, and the source of payment for the preparation of the memorandum. Members inquired concerning the basis of Mr. Carter's statement that his campaign subsequently paid \$150 for the memorandum based upon Abacus' estimate of the cost for the time it took to prepare the document.

The Commission recessed at 2:25 p.m. and reconvened for continued deliberation at 2:40 p.m.

Representative Bonnie Green, a Maine Clean Election Act Candidate in 2000, addressed the Commission to express her strong feelings regarding maintenance of the reliability of the Clean Election Act system. She explained that the process is not difficult, although new, and merely requires a candidate to inquire about anything that may not be clear.

Mr. Tom Fusco, affiliated with the Carter for Governor Campaign, addressed the Commission regarding the \$150 expenditure for the memorandum, and stated that Mr. Carter has intended to fully comply with the Maine Clean Election reporting requirements.

Mr. Adams again addressed the Commission regarding the issue of when a contribution occurs, explaining the statutory definition of "contribution" and its exceptions, noting that there is no exception for polling data. He questioned Mr. Carter's reference to the memorandum being provided "gratis" and what the relationship was between Mr. Carter and Abacus Associates.

Mr. Carter responded that even though the definition of "contribution" does not include voluntary services, which he believed to be the nature of the memorandum that Abacus provided, he nevertheless paid Abacus \$150 on April 10th, 2002 for the memorandum, and that expenditure had been included in the last campaign finance report along with a statement that he did not believe the expenditure had been required by law.

Mr. Donnelly then moved and Mr. Ott seconded to fine the Carter campaign \$150 as the value of the memorandum, and to deduct that amount from any initial distribution that Mr. Carter may receive if he were to be certified as a MCEA candidate. They cited as a basis for the motion that it appeared that Mr. Carter had not intended to violate the MCEA requirements and that he had rectified any violation when the fact had been recognized. They noted a "technical violation," questioning the timing and purpose of the memorandum.



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Chair Harding stated that he did not have enough information from Abacus Associates about the value of the time spent to prepare the memorandum, questioning whether the \$150 Mr. Carter had paid represented the full value of the memorandum and its contents. Counsel Gardiner questioned whether the motion included a finding that a violation resulted from the acceptance of seed money in excess of \$100 or from an impermissible source. Mr. Ketterer noted that the requested relief was for the Commission to conduct an investigation and the motion did not address that request. Thereupon, Mr. Donnelly and Mr. Ott withdrew their motion and second.

Chair Harding suggested that the Commission set a standard regarding what is meant by "something of value" in relation to a "contribution" that may be accepted before an individual becomes a candidate, e.g., what is the value of polling data in a case such as this. He noted that the issue here is the value of the raw polling data and the analysis of that data done in 2001.

Mr. Ketterer and Chair Harding suggested that the matter be set for continued consideration at another, reasonably prompt, date. In the meantime, interested parties would be given the opportunity to submit any requests to the Chair for the issuance of subpoenas to compel testimony. Thereafter, the Commission would conduct a fact-finding proceeding based upon information that could be provided by the recipients of any such subpoenas. Mr. Donnelly suggested that requests for investigations may become a slippery slope that could be used by candidates for political motives.

Mr. Ott stated that questions for a next proceeding would be: 1) what is the reasonable value of the information reflected in the August 1st, 2001 Abacus memorandum, 2) what was the purpose of the 2000 poll, and 3) how much did it cost Abacus to produce the 2001 memorandum. Members thereafter discussed the concepts of the cost of preparing the memorandum versus the value of the analysis contained in the memorandum. Members acknowledged that additional information about the cost value of the memorandum would be helpful to determine whether there had been a significant departure from the requirements of the Maine Clean Election Act.

Thereafter, a motion was made and seconded by Mr. Harding and Mr. Ketterer to conduct a further fact-finding inquiry. The motion was defeated by a vote of 2-2 (Mr. Donnelly and Mr. Ott opposed).

Mr. Ketterer departed at 3:50 p.m. due to a schedule conflict.

Mr. Hain suggested and Members agreed to table agenda item #14 (Commission staff personnel status report and discussion) for consideration at the next meeting.

Agenda Item #15: Other; Mr. Frank McDermott

Mr. Hain presented a request by Mr. McDermott for a case-by-case exception to the requirements of the Maine Clean Election Act. Mr. McDermott had incurred a printing obligation in anticipation of receipt of seed money contributions. Upon being informed that an expenditure includes the obligation to make a future expenditure, Mr. McDermott cancelled a portion of the printing request pending receipt of the funds with which to pay. Mr. Ott moved,



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Mr. Donnelly seconded, and Members voted unanimously to approve the staff recommendation to grant Mr. McDermott's request based upon his *bona fide* attempt to comply with the requirements as a first-time MCEA candidate and his full compliance with the requirements before his certification.

Members set Wednesday, May 1st, 2002, at 10:30 a.m. as the next scheduled Commission meeting in accordance with the statutory requirement to meet every two weeks during the period 60 days prior to an election.

There being no further business, on motion and unanimous vote, the Commission adjourned at 3:55 p.m.

Respectfully submitted,

William C. Hain, III
Director