



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

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July 10th, 2002

Minutes of the July 10th, 2002, meeting of the Commission on Governmental Ethics and Election Practices held in the Commission's Meeting Room, PUC Building, 242 State Street, Augusta, Maine.

Present: Acting Chair: Hon. Andrew Ketterer, Members: Hon. David Ott, Hon James Donnelly, and Alan Harding, Esq. (telephonically); Director William C. Hain, III, Esq.; Counsel Phyllis Gardiner, Esq.; and Commission Assistant Kendra Danforth.

At 9:20 a.m., Acting Chair Ketterer convened the meeting, announcing consideration of items on the published agenda as follows:

Agenda Item #12: Other; Maine Clean Election Fund Audit

Ms. Mary Gingrow-Shaw and Ms. Heidi McDonald, Representatives from the Department of Audit, addressed Commission Members regarding the audit of the Maine Clean Election Fund that is being conducted as a special project at the discretion of the State Auditor pursuant to recently enacted statutory authority. Among other reviews, the auditors will examine, review and test internal controls regarding the administration of the Maine Clean Election Fund to provide reasonable assurance to the Legislature and the people of Maine that the multi-million dollar Fund is being administered in such manner as to ensure accountability and safeguard the integrity of the Fund. Commission Members expressed their support for the conduct of an audit of the Maine Clean Election Fund and suggested that a complete audit should include the activities of the full primary and general elections cycle.

Agenda Item #2B: Alleged Violation of Attribution Requirements; Glenn Ross

By letter received May 13th, 2002, Representative Patricia A. Blanchette, alleged a violation of the attribution requirements for the publication and distribution of political statements of 21A M.R.S.A. §1014 by Mr. Ross. Mr. Ross addressed the Commission, reiterated his letter dated May 16th, 2002, and explained that he had affixed bumper stickers containing the required attribution language to each of his campaign signs, believing that action sufficient to satisfy the statutory disclosure requirements. Following discussion of the adequacy of that corrective action and the meaning of the statutory phrase "clearly and conspicuously" regarding the legibility of the affixed disclaimer language in this case, Mr. Donnelly moved, Mr. Ott seconded, and Members voted 3-1 (Mr. Harding opposed) to find no violation, recognizing Mr. Ross' good faith effort to comply. Mr. Harding announced that he would have found a violation, but would not have assessed a penalty.

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Agenda Item #5: Late Lobbyist/Employer Registration; Jadine O'Brien, Lobbyist for Harvard Pilgrim Health Care

The Lobbyist/Employer Joint Registration was filed 45 days late due to circumstances described by Ms. Lora M. Pellegrini, Manager of Government Relations, Harvard Pilgrim Health Care, in her letter dated June 14th, 2002, and supported by Maine Revenue Service letter to Harvard Pilgrim Health Care dated May 3rd, 2002. Ms. O'Brien addressed the Commission in support of Ms. Pellegrini's letter and responded to questions from Commission Members. After discussion, Mr. Donnelly moved, Mr. Ott seconded, and Members voted unanimously to waive any penalty based upon the *bona fide* effort of lobbyist and employer to register.

Agenda Item #1: Ratification of Minutes

Mr. Harding moved, Mr. Donnelly seconded, and Members voted unanimously to accept the minutes of the May 29th, 2002 meeting as prepared.

Agenda Item #2A: Alleged Violation of Attribution Requirements; Herbert E. Clark

By letters dated May 28th, June 5th, and June 7th, 2002, Ms. M. Lorraine Stanley, President, Committee to Elect Stephen S. Stanley, alleged separate violations of the requirements for the publication and distribution of political statements of 21A M.R.S.A. §1014 by Mr. Clark. After consideration of Mr. Clark's letters dated June 4th and 12th, 2002, Mr. Ott moved, Mr. Harding seconded, and Members voted unanimously to assess a civil forfeiture of \$100 against Mr. Clark.

Agenda Item #2A & #2B: Alleged Violation of Attribution Requirements; Timothy Richardson

By letter dated May 28th, 2002, Ms. M. Lorraine Stanley, President, Committee to Elect Stephen S. Stanley, and by letter received May 13th, 2002, Representative Patricia A. Blanchette each alleged violations of the requirements for the publication and distribution of political statements of 21A M.R.S.A. §1014 by Mr. Richardson. Mr. Richardson responded by letter dated June 8th, 2002, explaining that he had placed a stamp on each and every campaign sign that disclosed that he had paid for and authorized the expenditure and his address. Mr. Ott moved and Mr. Donnelly seconded to find no violation based upon the stamped correction to the signs, similar to the corrective action taken by Mr. Ross. During discussion of the motion, the question was asked whether the stamp was affixed to the signs before the complaint had been filed or as a result of the complaint. The answer to that question was not apparent from the correspondence. Mr. Harding then moved and Mr. Donnelly seconded to table the previous motion to provide staff time to ascertain Mr. Richardson's response to the question posed.

Agenda Item #3A: Late Candidate Campaign Finance Report; Brian Bolduc

Mr. Bolduc filed his January 2002 Semiannual Report 64 days late. Application of the statutory penalty formula resulted in a preliminary penalty determination of \$62.08. Additionally, Mr.



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Bolduc has an unpaid balance of \$100 from a previous penalty assessed by the Commission. Following brief discussion and absent any response from Mr. Bolduc to repeated correspondence, Mr. Ott moved, Mr. Harding seconded, and Members voted unanimously to assess a \$62.08 penalty and to refer the collection of that penalty with the unpaid \$100 penalty balance to the Attorney General for collection if the full amount is not paid.

Agenda Item #3B: Late Candidate Campaign Finance Report; Mark Cenci

Mr. Cenci filed his 42-Day Post-Special Election Report 6 days late. Application of the statutory penalty formula resulted in a preliminary penalty determination of \$11.10. Additionally, Mr. Cenci has an unpaid penalty of \$162.20 from a previous penalty assessed by the Commission. Following brief discussion and absent any response from Mr. Cenci to repeated correspondence, Mr. Donnelly moved, Mr. Ott seconded, and Members voted unanimously to assess a penalty of \$11.10 and to refer it and the unpaid \$162.20 outstanding penalty to the Attorney General for collection if the full amount is not paid.

Agenda Item #4: Late Lobbyist Monthly Disclosure Report; Richard A. Durost, Executive Director, Maine Principals' Association

Mr. Durost filed his April Monthly Lobbyist Disclosure Report 1 day late, with no previous late filings this biennium. The Commission considered the explanation provided in Mr. Durost's letter dated May 23rd, 2002, following which Mr. Harding moved, Mr. Donnelly seconded, and Members voted unanimously to assess a \$50 penalty for the late filing.

Agenda Item #6: Late Political Action Committee Report; Citizens for Responsibility; Richard P. Hawkins, Treasurer

The Citizens for Responsibility PAC filed its 6-Day Pre-Primary Report 12 days late. Application of the statutory penalty formula resulted in a preliminary penalty determination of \$360.00 for the violation. The PAC had one previous late submission. By letter dated June 14th, 2002, Mr. Hawkins requested a waiver of the late filing fee. Following brief discussion, Mr. Ott moved, Mr. Harding seconded, and Members voted 3-0 (Mr. Donnelly abstained from participation in the discussion and vote) to assess a \$360.00 penalty for the late filing.

Agenda Item #7: Delinquent Political Action Committee Campaign Finance Report; Dirigo Alliance PAC; George A. Christie, Treasurer

The Dirigo Alliance PAC had failed to submit its April Quarterly PAC Report that was due on April 16th, 2002. Additionally, the Commission was informed that notices were still pending regarding the PAC's failure to submit its 6-Day Pre-Primary Report that was due on June 5th, 2002. Mr. Hain informed Members that Mr. Christie had called the Commission office before the meeting and informed the staff that he would that day file his April Quarterly Report reflecting no activity for the reporting period, and that he had no excuse to offer for the late filing. During the meeting, the staff received a faxed copy of Mr. Christie's report with an



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accompanying cover letter. Based upon that information, Mr. Donnelly moved and Mr. Harding seconded to table further consideration of the matter.

Agenda Item #8: Contribution in Excess of Limit; Thomas S. Roche, Sr.

Mr. Roche had reported receipt of a \$350 in-kind contribution as a candidate for County Sheriff. He subsequently amended his report to reflect more accurately that a \$300 in-kind payment had been made by a supporting organization for DJ services. He also reported a refund of the \$50 excess in-kind contribution that his campaign made to the supporting organization. 21A M.R.S.A. §1015(1) limits contributions to \$250 per candidate per election. Following consideration of Mr. Roche's letter dated June 26th, 2002, and brief discussion, Mr. Ott moved, Mr. Harding seconded, and Members voted unanimously to find no violation, but to issue a warning against any future violations. That decision was based upon the Commission's past practice for a 1st time excess contribution violation that is not knowingly made and accepted if the excess is refunded to the contributor when notified of the violation.

Agenda Item #9: Staff request for Commission interpretation; candidate campaign finance report late filing penalty

21A M.R.S.A. §1020-A(4) sets the parameters for determining the penalty amount for the late filing of a required report as the greater of the total contributions or expenditures times a specified percentage times the number of days late. Mr. Hain requested the Commission to interpret the applicable statutory provision to determine whether, for certified Maine Clean Election Act (MCEA) candidates, the amount of the MCEA fund distribution should be considered a "contribution" to the candidate for application of the penalty provision. Following discussion of the applicable statutory and rule provisions, Mr. Ott moved, Mr. Donnelly seconded, and Members voted unanimously to interpret that applicable provision to use the amount of expenditures reported by MCEA candidates for the computation of penalties, not the amount of the distributions from the Maine Clean Election Fund. Distributions to MCEA candidates are a matter of public record in the candidate's file before the campaign finance reports are filed and, therefore, fulfill the disclosure objectives of the statute with respect to those amounts. If the candidate reported having not made any expenditures, the late filing would be a violation for subsequent penalty consideration, but no penalty would be assessed for this violation.

Agenda Item #10: Staff request for Commission interpretation; eligibility for matching funds for MCEA candidates with nonparticipating, unenrolled general election opponents

A MCEA candidate is eligible to receive matching funds in the general election when the greater of a nonparticipating, unenrolled opponent's contributions or expenditures exceeds 101% of the MCEA candidate's initial distribution. Mr. Hain requested the Commission to interpret the applicable statutory provision to determine whether the amount raised/spent by an unenrolled candidate before the primary election should be counted toward the general election (since an unenrolled candidate does not have a primary election), or whether the account balance as of the first day of the general election should be used to compute matching fund eligibility, as is done



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with all other candidates. Following brief discussion of the applicable statutory and rule provisions, Mr. Ott moved, Mr. Harding seconded, and Members voted unanimously to interpret the applicable provision to use the unenrolled candidate's account balance as of the day following the primary election (i.e., the first day of the general election period) to compute matching fund eligibility.

Agenda Item #11: Staff request for Commission interpretation; eligibility for certification as MCEA candidate

Commission Rules, Ch. 3, Sec. 8.2.B, provide that if a candidate withdraws before 5:00 p.m. on the 2nd Monday in July preceding the general election, any replacement candidate will have a qualifying period of 30 days from the 4th Monday in July as a participating candidate to collect qualifying contributions and request certification. Party representatives on behalf of several successful nonparticipating primary election candidates had requested to know whether those candidates would be eligible for Clean Election Act funding if they withdraw and are then nominated as replacement candidates. Mr. Hain requested the Commission to interpret the applicable rule to determine whether a successful primary election candidate (not previously certified as a MCEA candidate) who withdraws after the primary election and then is nominated by party caucus to replace him/herself on the ballot for the general election is eligible to be certified as a MCEA candidate for the general election. Following extensive discussion of the applicable rule and public policy considerations, Mr. Ott moved, Mr. Donnelly seconded, and Members voted 3-1 (Mr. Harding opposed) to interpret the phrase "any replacement candidate" in the applicable rule to exclude a candidate nominated to replace him or herself as a withdrawn candidate from eligibility for Maine Clean Election Act participation. Candidates in the primary election who either become certified MCEA candidates or do not elect to participate in the Maine Clean Election Act may not thereafter change their status from certified to nonparticipating, or vice versa, following the primary election. The majority of Members expressed concern that candidates who replace themselves following their withdrawal after the primary may try to use that mechanism to circumvent the proscription against changing funding status.

Agenda Item #12: Other; Counsel Status

Mr. Hain informed Members of the status of establishing a Commission Counsel position. The Bureau of Human Resources has taken steps to classify the new position and has forwarded the approved paperwork to the Bureau of the Budget for their review to include addressing any funding issues associated with the classification. Given the statutory mandate for administration of an electronic filing system and the lack of information technology expertise readily available to the staff, Mr. Hain suggested that the Commission consider whether a separate Counsel is more beneficial to Commission operations than would be an information technology specialist. Commission Members agreed to consider the matter further with possible recommendation to the Legislature regarding a change to the Counsel position.

Members set Wednesday, August 14th, 2002, at 9:00 a.m. as the next scheduled Commission meeting.



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There being no further business, on motion and unanimous vote, the Commission adjourned at 11:52 a.m.

Respectfully submitted,

William C. Hain, III
Director