



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

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

October 18th, 2002

Minutes of the October 18th, 2002, special 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: Chair: Alan Harding, Esq.; Members: Hon. Andrew Ketterer, Esq., Dr. Terrence MacTaggart, and Hon. James Donnelly (telephonically); Director William C. Hain, III, Esq.; Acting Counsel William Laubenstein, Esq.; and Commission Assistant Kendra Danforth.

At 1:20 p.m., Chair Harding convened the special meeting, welcomed newly confirmed Commission Member, Dr. Terrence MacTaggart, to his first in-person Commission meeting (Dr. MacTaggart had previously participated in a Teleconference meeting on October 10th, 2002), and announced consideration of the published agenda as follows:

William C. Collins, Candidate, House District #27, Request for Reconsideration

By letter dated October 17th, 2002, Christopher C. Taintor, Esq., on behalf of Mr. Collins, requested the Commission to reconsider the decision made at the Commission meeting on October 2nd, 2002, that Mr. Collins was not entitled to matching funds under the Maine Clean Election Act as of that date. Mr. Taintor's letter included a request for a full evidentiary hearing to be held at which the Commission was requested to obtain and receive evidence concerning the purposes of certain expenditures made by Representative Kevin Glynn on and before June 11th, 2002. Further, the Commission was requested to make specific findings of fact concerning whether those expenditures were made to influence the general election. If that was found to be the case, the Commission was requested to distribute matching funds to Mr. Collins based upon those expenditures by his opponent, Representative Glynn.

Thomas Bradley, Esq., Staff Attorney for the Maine Citizen Leadership Fund, appeared on behalf of Mr. Collins, who was also present. Mr. Bradley summarized Mr. Collins' request for the Commission to reconsider the action it took on October 2nd that resulted in the denial of matching fund eligibility for Mr. Collins under the Maine Clean Election Act. Mr. Bradley reiterated that the basis of that eligibility was the fact that Rep. Glynn had expended over \$13,000 the day or two before the primary election that could have been for no purpose other than for the benefit of his general election campaign since Rep. Glynn had been unopposed in the primary election. Mr. Bradley stated that Mr. Collins' expectation had been that the Commission would investigate on its own initiative to determine the facts surrounding Mr. Glynn's expenditures, and that Mr. Collins had not understood that he needed to have been present or

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS



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

represented at the October 2nd meeting for the Commission to undertake that investigation. Mr. Bradley responded to questions by stating that Mr. Collins had raised the issue and believed that the burden was on the Commission to inquire into the nature and purpose of Mr. Glynn's pre-primary election expenditures to determine whether they were for the purpose of influencing the general election. Chair Harding questioned whether the challenging candidate should not have the burden of presenting some evidence concerning the nature of an opponent's questioned expenditures in order to present at least a minimal basis for Commission action.

Ann Robinson, Esq., appeared on behalf of Rep. Kevin Glynn, and addressed the Commission in opposition to Mr. Collins' request for reconsideration. She stated that Mr. Collins' request was not properly before the Commission since the Commission lacked jurisdiction inasmuch as the lawsuit filed on Mr. Collins' behalf removed jurisdiction from the Commission to the Superior Court during the pending of that action. She cited the case of Gagne v. Inhabitants of City of Lewiston [281 A.2d 579 (Me. 1971)] for the proposition that filing an appeal from the decision of an administrative agency removes the cause from the administrative tribunal to superior court and terminates the authority of the tribunal to modify its decision unless the court remands the matter to the tribunal for further action, thereby reviving the tribunal's authority. She noted that Mr. Collins chose not to attend the October 2nd meeting, thereafter filing suit in Superior Court, thus taking the matter out of the Commission's hands until the court acts.

Chair Harding questioned Ms. Robinson about the application of Gagne to the facts of this case and Mr. Collins' default by his failure to appear at the October 2nd meeting, thus preventing a substantive decision regarding the facts surrounding Rep. Glynn's expenditures. Acting Counsel Laubenstein suggested that Mr. Bradley be heard on the issue of jurisdiction.

Mr. Bradley noted that part of the relief that the lawsuit sought was to have the Commission make findings of fact with respect to Rep. Glynn's pre-primary election expenditures and that if the Court were to grant that relief, the matter would be returned to the Commission for that action. The Commission could make those findings here, doing what it could have done before, and Mr. Bradley stated his belief that the Court would not find fault with that action.

Ms. Robinson again cited Gagne and reiterated her position that the Commission lacks authority to act because it simply does not have jurisdiction over this matter unless the Court remands the matter to the Commission for action or the lawsuit is withdrawn or dismissed.

Mr. Bradley noted a distinction between Gagne and the facts in this case. He stated that the relief requested in the lawsuit is the same relief as Mr. Collins is now seeking before the Commission, whereas, in Gagne, the relief requested was to modify the record.

Chair Harding suggested that withdrawing the pending action may cure any jurisdictional issue and proposed a brief recess for Mr. Bradley to discuss a possible dismissal with Mr. Collins and co-counsel Taintor.

The Commission recessed at 1:57 p.m. and reconvened at 2:03 for further consideration. Mr. Bradley stated that dismissal of the pending action was not attractive because of the shortage of



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

time before the election date. He noted that, under the present scenario, any relief would be meaningless by the time Mr. Collins received it. Chair Harding inquired whether Acting Counsel Laubenstein's interpretation of the impact of Gagne was the same as Attorney Robinson's. Counsel Laubenstein responded in the affirmative.

Chair Harding addressed Mr. Bradley, noting that while the Chair did not speak for the whole Commission he believed that the jurisdictional issue created by the pending lawsuit created two undesirable choices and suggested that Mr. Bradley may want to look at which choice is the better of those two undesirable choices. He offered Mr. Bradley an additional 15 minute recess to discuss the matter with his client and co-counsel, but noted that if their position did not change, it was not likely that the Commission would be in a position to do much more.

The Commission recessed at 2:10 p.m. and reconvened at 2:29 for further consideration. Mr. Bradley announced that Mr. Collins was willing to dismiss his lawsuit in order to resolve the jurisdictional issue. Co-counsel Taintor was preparing the necessary paperwork to be filed as soon as possible with the Superior Court. Ms. Robinson noted that until the pleadings were filed with the Court, the Commission continued to lack jurisdiction to consider this matter. She noted further on the issue of reconsideration, assuming dismissal of the lawsuit, that Mr. Collins had the opportunity to present his argument at the October 2nd meeting and failed to do so.

The Commission recessed at 2:35 p.m. and reconvened at 3:08 p.m. Chair Harding noted that the Commission had received a facsimile copy of a "Notice of Dismissal" entered by the Cumberland County Superior Court Clerk at 2:43 p.m., October 18th, 2002, and inquired whether Attorney Robinson had any further objection to the Commission's proceeding with Mr. Collins' request for reconsideration inasmuch as the jurisdictional issue appeared to have been resolved.

Ms. Robinson reasserted her objection to the Commission's continuation, noting that the Commission had already taken final action and questioning whether Mr. Collins could initiate another proceeding. Acting Counsel Laubenstein stated that the Commission's decision of October 2nd, 2002, was standing and a motion to reconsider would be appropriate, at which time Chair Harding entertained a motion to reconsider the Commission's October 2nd action from any Commission Member who had voted in the affirmative on the action to be reconsidered. No Member offered a motion to reconsider.

Chair Harding then moved and Mr. Ketterer seconded to reconsider the previous Commission action for the purpose of discussion. Thereafter followed a protracted discussion of the possible interpretations that Mr. Collins may have had of the September 27th, 2002 notification letter from Mr. Hain; whether Mr. Collins' failure to appear at the October 2nd meeting should now preclude him from asserting his position with regard to the substantive issues; the Commission's understanding of the February 2000 action by former Commission members regarding the issue now before this Commission; and the opinion of Commission Counsel Gardiner (who had not been present at the October 2nd meeting) regarding these matters. Chair Harding focused his position on what he believed to have been a misimpression on September 13th by present Commission Members of what former Commission Members had decided in February 2000



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

regarding how expenditures made before a primary election but actually benefit the general election should be treated for general election matching fund purposes.

While other Members did not necessarily disagree with Chair Harding's position, they objected to changing the announced procedures for handling this type of situation in the middle of this campaign cycle. Instead, they suggested that the matter be addressed after the election either through Commission Rules or by referral to the Legislature with other recommendations regarding the administration of the Maine Clean Election Act. Chair Harding responded that no harm would be done to any nonparticipating candidate by now considering expenditures made by that candidate before the primary election for the benefit of the general election in computing matching fund eligibility of a Clean Election Act opponent in the general election, while those nonparticipating candidates unfairly would benefit by not making that determination. Other Members noted the difficulty in administering the law as proposed by the Chair. The discussion concluded with statements of opposing positions regarding the interpretation of the law and the relative fairness associated with not reinterpreting the law.

Thereafter, on the motion to reconsider the previous Commission action, the motion failed by a vote of 1-3 (Chair Harding in favor; Mr. Ketterer, Mr. Donnelly, and Dr. MacTaggart opposed).

There being no further business, at 4:02 p.m. Mr. Ketterer moved, Mr. Donnelly seconded, and Members voted unanimously to adjourn.

Respectfully submitted,

William C. Hain, III
Director