

**Minutes of the February 17, 2005 meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine**

DRAFT

Present: Chair James Donnelly; Hon. Jean Ginn Marvin; Hon. Andrew Ketterer
Staff: Executive Director Jonathan Wayne; Counsel Phyllis Gardiner

At 915 a.m., Chair Donnelly opened the meeting.

Agenda Item #1 – Ratification of Minutes of October 15, 2004 Meeting

The Commission voted unanimously to accept the minutes as drafted.

Agenda Item #2 – Staff Update on Funding for the Maine Clean Election Act

The Director said that, with regards to the state budget, a \$2.4 million transfer from the general fund had been recommended. \$3 million was already in the MCEA fund, and \$2 million would be added on January 1, 2006. The Commission had asked for \$ 4.7 million to cover projections for the 2006 elections. The Governor's 2006/2007 budget relied on existing law. In February 2007 the Commission could get an advance on the 2008 election. The projections used a 20% increase in candidates when the Commission asked Appropriations for the money. The projections were based on an average of the last two elections.

Order Change

Due to time constraints, items were taken out of order. The first out of order item was an item not on the agenda concerning an email from the governor's office.

Other – Advisory from the Governor's Office

The Director stated that the First Lady of Maine, Karen Baldacci, was interested in raising funds so she could host the National Governor's Association seminar in Maine. This would constitute fund raising during the legislative session, and current law prohibited raising funds during the legislative session. The Director said that he felt the statute prohibited raising funds for campaign contributions during this time but it did not prohibit fund raising for charity funding. The Director recommended that she could go

ahead and raise the funds. Ms. Ginn Marvin asked if these funds were for meals and/or lodging for those in attendance.

Sarah Holmes, deputy counsel for the Governor, took the floor. She said the funds would include sightseeing, programs for the spouses, and workshops on literacy, nutrition and children's issues. She also said the money would be used for speakers to address these issues. She added that any money left over would be donated to charity. Mr. Ketterer asked if it was part of the governor's summer meeting. Ms. Holmes said she thought it was.

Mr. Ketterer moved, Ms. Ginn Marvin seconded, and the Commission voted unanimously (3-0) that the Director, acting on behalf of the Commission, would send the final copy of the proposed instructions.

Order Change

The Director asked to move to Question # 6, due to time constraints. The Director indicated that it was important for a hearing date be set, as the proposed rule changes had to be before the Legislature by April if it was going to be done this session. Included in this was Item #8.

Agenda Items #6 and #8 – Proposed Rules for Public Comment

The Director said that staff has been making a list, throughout the election, of items that needed to be changed. Those changes were indicated in the proposed rule changes. The Director started off by recommending that the definition part of the rules be moved from Chapter 3 to Chapter No. 1. The Director said other changes were as follows:

Chapter 1, page 2, #13 – Attempted to define “what is a member of a membership organization?” The Commission had some issues with this item, and the Director said he made a definition and borrowed from the federal “what is a member” section and simplified it to include professional associations, trade associations, labor unions and other such organizations. Mr. Donnelly asked how this would apply to organizations such as Credit Union Associations. The Director replied that if there was significant ownership stake, that would factor in the decision. Discussion followed over the definition of “significant”. Mr. Donnelly brought up the issue of complaints. The Commission discussed who could bring complaints and the amount of information that needed to be included in the complaint. Ms. Ginn Marvin said she thought the person bringing the complaint must identify the source of the information. Ms. Gardiner said a part should be added that said the person making the complaint needed to identify if their information was from personal knowledge or another source, and if so, they needed to name the other source. Mr. Donnelly wanted to make sure that complaints did not become a vehicle for harassment.

Chapter 1, page 14 – Individuals who give between \$50 and \$100 in seed money contributions must now report their employer and occupation.

Chapter 1, pages 14 and 15 – Goods and services given to a candidate for the purposes of influencing a recount are not considered as campaign contributions and therefore are not subject to contribution limits or reporting requirements.

Chapter 1, pages 18 into 19 - Definition of what “expressly advocates” means. Ms. Gardiner said in view of the McConnell Supreme Court decision, the definition in the proposed rule changes would be fine. (Jonathan will want to listen here-I can’t tell what Phyllis is talking about) Ms. Ginn Marvin did not think the current language would accomplish the Commission’s goals, but was unsure as to how exactly the language should be framed. Mr. Ketterer recommended leaving the language in until public comment was received. Mr. Donnelly asked if at the public hearing, if it was recommended that the language should be changed did another public hearing have to be held. Ms. Gardiner answered that after public comment the Commission could go back and review the proposed changes, but that would only happen if substantial changes were recommended.

Chapter 1, pages 21 through 23 - The issue of 21 days before the election on advertising expenditures. The Director said that staff tried to summarize all the recommendations dealing with this issue on a couple of pages. This change dealt with slate cards and how to figure for matching funds. The consensus was that employers giving out election information will have to make a reasonable estimate on how many employees live in each district and will not be mandated to take an actual head count. Ms. Ginn Marvin asked how proof was used when figuring out how to allocate matching funds. Ms. Gardiner said the person reporting was responsible for coming up with the allocations. The Director said that, at this time, there was no set way to figure the allocation. The Director said he definitely wanted the allocation formula to be workable and fair. Ms. Gardiner said it needed to be equitable between the numbers of candidates concerned. In the discussion on score cards, the Director said he didn’t think money should be allocated when score cards are involved. Mr. Donnelly disagreed, and said that score cards are made to influence the election and allocations should be made and that score cards should trigger matching funds. The Director brought up the suggestion that the Commission could look at score cards as a case by case basis, or that score cards could be included in a blanket exemption. The consensus was to have an exemption for a voting or legislative score card listing more than 25 candidates representing more than one political party included in the proposed rule changes. Ms. Ginn Marvin asked if under 5A if something should be put in about email or computer communications in that section. The Director felt that they should be covered. The Director brought up the point that, in his opinion, literature was to be disseminated when the literature was sent and not when viewed by the voters.

Chapter 1, page 24 - Contributions from lobbyists and employers during the sessions. Section 12.1 says that those contributions are covered by the rules of prohibition during the session. Paragraphs 2 and 3 attempt to clarify the situation and adds that a legislator is prohibited from accepting contributions for the PAC during the legislative session.

Chapter 3 - The staff was proposing a combined registration form, and to eliminate notarization of the declaration of intent.

Chapter 3, pages 6 and 7 – Question concerning whether to include into rules what has been in the past administrative procedure, including procedures involving \$5 qualifying checks. The Director brought up the challenges against Jonathan Carter during the 2002 election as an example of why this was being brought to the Commission’s attention.

Chapter 3, page 14 – Paragraph F dealt with independent expenditures relating to PAC contributions. The goal was to contain the cost of the program. Mr. Donnelly expressed concerns that this section would not allow a candidate to properly receive matching funds. Consensus was that this part should be deleted at this time. The Director explained that Paragraph G dealt with a traditional candidate repaying a loan or returning a contribution, and how that played into awarding matching funds. The Director explained that in such a case, the matching funds would not be counted twice.

Chapter 3, page 15 – Relating to thank you notes and election night party expenditures-are those expenditures election related, because if they are, then MCEA funds could be used. The consensus was to let the legislature deal with this issue.

Chapter 3, page 17 - Concerns hiring practices and reporting of salaries. The thought was to provide a worksheet for employees, showing approximate number of hours worked, and this worksheet wouldn’t have to be submitted, but candidates would have to keep it in their campaign records and have it available for review. Mr. Donnelly asked if the Commission had any requirement or obligations to be sure that salaries were being paid to employees. He then asked if a 1099 was required. The Director replied that the Commission had no obligation in this area at this time.

Chapter 3, page 20 - Concerns write-in candidates. The Director indicated that write-in candidates had to register with the Commission, had to file reports, and they could not participate in the Clean Election Act. Mr. Donnelly asked if someone was not a MCEA candidate for the primary, could they register as a MCEA candidate in the general election. The Director replied the legislature took care of that issue.

Mr. Ketterer moved, Ms. Ginn Marvin seconded, and the Commission voted unanimously (3-0) to adopt the proposed rule changes and changes to the candidate reporting form.

Agenda Item #7 – Dates of Public Hearing for Rule-Making and Future Meetings

The Commission decided to hold the public hearing to March 18th, and to deal with old business on March 9th.

Due to time constraints, there was no further business, and the Commission adjourned.

Dated:

Respectfully submitted,

Jonathan Wayne
Executive Director