



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

Minutes of the January 19, 2007 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: Hon. Andrew Ketterer, Chair; Hon. Michael P. Friedman (by telephone); Hon. Jean Ginn Marvin; Hon. A. Mavourneen Thompson (by telephone). Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:05 A.M., Chair Andrew Ketterer convened the meeting. The Commission considered the following items:

Agenda Item #1 – Return of Maine Clean Election Act Funds/Thomas Bossie

Mr. Wayne said that Mr. Bossie returned to the Commission staff the full amount of unauthorized matching funds that he received. Mr. Wayne said that Mr. Bossie stated that he spent the entirety of the authorized funds. Mr. Wayne said that the Commission staff was not yet certain that Mr. Bossie reported his expenditures correctly and recommended putting discussion of this item off until the next meeting.

Mr. Ketterer asked what amounts Mr. Bossie returned and what amounts he may still owe the Commission. Mr. Wayne said that Mr. Bossie repaid funds that were spent on unallowable expenditures, paid a penalty, and returned the unauthorized amount of matching funds. Mr. Wayne said that Mr. Bossie appears to still owe \$4,080 in authorized funds, though Mr. Bossie said that he spent that money on advertising.

Mr. Ketterer recommended that the Commission not wait until the next meeting to make a decision.

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Mr. Wayne said that the Commission staff could request invoices and subpoena Mr. Bossie's campaign bank records.

Ms. Thompson asked why Mr. Bossie has not responded to the Commission's requests. Mr. Wayne said that Mr. Bossie's response was that he already returned all his unspent Clean Election funds.

Mr. Ketterer said that Mr. Bossie refused certified mail from the Commission staff.

Mr. Friedman asked if Mr. Bossie was present at the meeting. Mr. Ketterer replied that he was not.

Mr. Friedman suggested that Mr. Bossie be referred to the Attorney General's Office.

Ms. Ginn Marvin moved, Ms. Thompson seconded, and the Commission voted unanimously (4-0) to refer the collection of Mr. Bossie's unspent Maine Clean Election Act funds to the Attorney General.

Agenda Item #2 – PAC Reporting Issue/Maine Economic Research Institute

Mr. Ketterer asked whether the Commission had dismissed the complaint against the Maine Economic Research Institute (MERI). Mr. Wayne replied that it had, but that the Commission had postponed a decision on whether MERI should be required to register as a political action committee.

Mr. Ketterer said that would be acceptable to proceed without Mr. Hanson who filed the original complaint against MERI. Mr. Ketterer said that MERI did not appear to meet the definition of a PAC in that it did not function as a funding and transfer mechanism or as a segregated fund.

Mr. Friedman and Ms. Thompson agreed with Mr. Ketterer that MERI was not a PAC.

Ms. Ginn Marvin moved, and Mr. Friedman seconded, that the Commission adopt the staff recommendation to find that the Maine Economic Research Institute was not a PAC and to consider changes to the statutory definition of a PAC.

Mr. Ketterer said that the voter guide published by MERI did appear to be intended to influence the vote.

The Commission voted unanimously (4-0) to adopt the staff recommendation to find that the Maine Economic Research Institute was not a PAC and to consider changes to the statutory definition of a PAC.

Agenda Item #3 – Proposed Changes to PAC Definition, §1056-B Reporting

Mr. Wayne said that proposed changes to the PAC definition would set a \$1,500 threshold of contributions or expenditures that would require an organization with the major purpose of influencing an election to register as a PAC. Mr. Wayne said that an organization without the major purpose of influencing an election would not have to register as a PAC unless it spent more than \$5,000 to influence an election.

John Branson, Esq., objected to Ms. Ginn Marvin's participation in the discussion of any topic affecting the Maine Heritage Policy Center (MHPC). Mr. Branson said that the proposed changes to the PAC definition would not require any reporting from MHPC. Mr. Branson said that he was appealing the Commission's decision regarding Carl Lindemann's complaint against MHPC.

In response to a suggestion by Mr. Branson, Mr. Ketterer said that the Commission members do not hold private meetings and only communicate to discuss the scheduling of meetings.

Phyllis Gardiner joined the meeting.

Mr. Ketterer asked if the Commission should hold a vote on Ms. Ginn Marvin's recusal. Ms. Gardiner said that there was nothing specified in the rules relating to recusal and that it was up to the individual Commission member.

Ms. Thompson said that recusal would be appropriate for meeting items discussing MHPC specifically, but not for general policy discussions. Mr. Friedman agreed that no recusal was necessary because the Commission was holding a policy discussion and not an adjudicatory procedure. Mr. Ketterer agreed that no recusal was necessary. Mr. Ketterer said that a motion was not necessary but he would make one anyway. Mr. Ketterer moved, and the Commission voted 0-3, to require Ms. Ginn Marvin's recusal from agenda item #3. The motion failed.

Mr. Branson said that he did not receive a copy of the December 27 memo to interested persons on changes to §1056-B reporting. Mr. Branson said that the proposed change was drastic and would eliminate the §1056-B filing requirement. Mr. Branson said that the \$5,000 PAC registration threshold would not include staff time. Mr. Branson said that he preferred that the Commission make no recommendations and wait for a judicial determination.

Ms. Thompson asked about the December 27 memo. Mr. Ketterer said that it would be discussed later in the meeting.

Carl Lindemann said that newspaper editorials portrayed him as curtailing First Amendment rights, but he had not heard any complaints from groups about the reporting requirements.

Daniel Billings, Esq., representing MHPC, said that he became aware of the PAC definition proposal the previous Monday. Mr. Billings said that the Commission staff's December 27 memo was a good-faith effort to notify interested parties. Mr. Billings said that the proposed changes did not result from pressure from MHPC. Mr. Billings said that the changes would draw clearer lines, but it would still be difficult to determine whether activities were meant to influence the election. Mr. Billings said that the Commission should not wait for guidance from the courts and that MHPC would not appeal the court's decision.

Jonathan Crasnick of Democracy Maine said that Democracy Maine originally requested that MHPC be required to file a §1056-B report, but then decided that it should be required to register as a PAC. Mr. Crasnick said that Democracy Maine was willing to register as a PAC and file the required reports. Mr. Crasnick said that public had a right to know who was influencing elections.

Christopher St. John of the Maine Center for Economic Policy said that the Commission would go too far by requiring MCEP to register as a PAC. Mr. St. John recommended changing the §1056-B requirement instead. Mr. St. John said that the definition of a PAC was already sufficiently detailed and that disclosure requirements should focus on large organizations. Mr. St. John said that the proposed changes would result in less disclosure, since PACs could transfer general support funds from another organization without reporting the original contributors.

Mr. Wayne said that Paul Lavin mailed the memo on proposed changes to all §1056-B filers but did not send a copy to Mr. Branson. Mr. Wayne said that the proposal would strengthen disclosure and was not influenced by any requests from MHPC. Mr. Wayne said that the public was generally not familiar with the §1056-B reports and they were difficult to find on the Commission's website. Mr. Wayne said that he was not aware of any other state with a reporting requirement similar to the §1056-B report. Mr. Wayne said that the Commission was not required to solicit comments from §1056-B filers but did so as a courtesy. Mr. Wayne said that the Commission staff could still withdraw its proposed changes.

Ms. Thompson asked whether the Commission would be receiving guidance from the court. Ms. Gardiner replied that she had not seen the complaint, but that the court would only address the existing statute. Ms. Gardiner said that the court would not be discussing alternatives to the existing law.

Mr. Friedman said that the court's previous case on the appeal filed by Pat LaMarche limited discussion on the merits of the law. Mr. Friedman said that the Commission should not wait for

a judicial decision. Mr. Friedman said that the Commission should not worry about drafting a perfect bill, since the Legislature would refine it and hold public hearings.

Mr. Ketterer said that it was not necessary to have a proposed bill from the Commission for the Legislature to make changes. Mr. Friedman said that a proposed bill would be a more public process.

Ms. Thompson said that the proposed changes to the statute did not have a consensus and should be discussed further. Mr. Ketterer said that there was a limited amount of time during which the Commission was allowed to present statutory changes to the Legislature. Ms. Thompson said that the Commission needed to discuss the changes further and see the bill proposed by Rep. Cynthia Dill.

Ms. Ginn Marvin said that it was the job of the Commission to propose changes, and the ones put forward by the Commission staff were a good first step.

Ms. Thompson asked what issues needed clarification and suggested the possibility of postponing the bill.

Mr. Friedman recommended sending the bill to the Legislature.

Mr. Ketterer said that there was not much time, and the proposed changes had already been refined by Commission staff. Mr. Ketterer recommended putting the bill forward and letting the Legislature make any further changes.

Mr. Branson said that the Commission did not have the statutory authority to propose changes without due process. Mr. Ketterer said that Mr. Branson's comments were on the record and he could appeal the decision if he wished. Mr. Wayne said that the Commission staff's procedures

included sending e-mails to all candidates, PACs, and party committees notifying them of the proposed changes.

Ms. Thompson suggested increasing the proposed PAC registration threshold from \$5,000 to \$10,000 and include staff time. Mr. Wayne said that keeping track of staff time would be burdensome.

Ms. Gardiner said that there may be tax issues involved with counting staff time rather than monetary expenditures. Mr. Ketterer said that the Commission should let the Legislature work around those issues.

Ms. Thompson moved that the Commission accept the staff recommendation while amending §1052-A(2) to \$10,000 rather than \$5,000 as originally proposed. The motion failed for lack of a second.

Mr. Ketterer asked if the motion would include staff time toward the \$10,000 threshold. Ms. Thompson said no.

Ms. Ginn Marvin moved that the Commission accept the staff recommendation using the second version of §1052-A(2) proposed by the staff. The motion failed for lack of a second.

Mr. Friedman moved, Ms. Ginn Marvin seconded, and the Commission voted 3-1 to accept the staff recommendation using both alternatives proposed for changes to §1052-A(2). Mr. Friedman, Mr. Ketterer, and Ms. Thompson voted for the motion and Ms. Ginn Marvin voted against it.

Mr. Friedman amended his motion to indicate that the Commission would send two separate bills to the Legislature, each including one of the proposed changes to §1052-A(2). The Commission

voted 3-1 to adopt the amended motion. Mr. Friedman, Ms. Ginn Marvin, and Mr. Ketterer voted for the motion and Ms. Thompson voted against it.

Agenda Item #4 – Proposed Rule on Voter Guides and Legislative Scorecards

Mr. Wayne said that under the proposed changes, organizations could still mail voter guides more than 60 days before the election without triggering filing requirements.

Ed McLaughlin of the Maine Economic Research Institute said that there should be some differentiation between educating the public and an intent to influence an election. Mr. McLaughlin said that the proposed changes should consider electronic communications in addition to printed materials. Mr. McLaughlin said that MERI met with Mr. Wayne and his predecessor William Hain, who said that MERI did not meet the definition of a PAC. Mr. McLaughlin said that MERI had followed the advice given by Commission staff.

Mr. Ketterer said that it was good of MERI to seek guidance by the Commission staff.

Tony Paine of the Alliance for Maine's Future said that educational organizations would not limit their communications to their members.

Mr. Ketterer recommended discussing this item along with agenda item #6.

Agenda Item #5 – Development of Administrative Policy/Inadequate Documentation of MCEA Expenditures

Mr. Wayne said that some candidates may have been unaware of the requirement to keep receipts and invoices. Mr. Wayne said that the Commission could consider it a violation to not keep the required documentation. It could consider the undocumented expenditures to be invalid and require candidates to pay back the funds, or it could assess a civil penalty.

Vincent Dinan, the staff auditor, said that most candidates could provide documentation when asked. Mr. Dinan said that some candidates claimed expenditures with no proof that the expenditure was made and others reimbursed themselves with campaign funds without maintaining a receipt of the transaction.

Ms. Ginn Marvin asked if candidates only needed a receipt if a reimbursement occurred. Mr. Dinan said that candidates also needed proof of payment. Mr. Dinan said that best practice was to use a campaign debit card.

Ms. Thompson asked what percentage of Clean Election candidates was audited. Mr. Dinan said that 20% of candidates for Representative were chosen for an audit and half of those audits were completed.

Mr. Ketterer asked what the staff recommended. Mr. Dinan recommended disallowing the undocumented expenditures.

Ms. Thompson asked how many candidates were found to have undocumented expenditures. Mr. Dinan replied that the staff had found five so far. Ms. Thompson asked about the severity of the undocumented expenditures. Mr. Dinan said that some were large expenditures but most were small.

Daniel Billings, Esq., counsel for the Woodcock for Governor campaign, said that the campaign had to request invoices after the expenditures had been made. Mr. Billings said that the campaign did have cancelled checks as proof of purchase, but it was difficult to get invoices from some businesses. Mr. Billings said that TV stations did not print the invoices until after the ads had run. Mr. Billings said that disallowing undocumented expenditures was the best option. Mr. Billings recommended that the Commission separately consider the five cases of undocumented expenditures. Mr. Billings said that the Commission should look closely at large cash expenditures.

Ms. Thompson said that the five cases were not a matter of timeliness in getting the required documentation. Mr. Billings said that some businesses may never provide invoices, making disallowance of those expenditures inappropriate.

Ms. Thompson asked Mr. Dinan what the status was of the five cases of undocumented expenditures. Mr. Dinan said that he was working with them to get the requested documentation.

Mr. Ketterer said that some candidates may not have had prior business experience. Mr. Ketterer said that unverified expenditures should still be paid back to the Commission.

Mr. Dinan said that some of the cases of undocumented expenditures would be ready for Commission review at the February meeting. Mr. Dinan said that he would present several options available to the Commission.

Ms. Thompson said that it seemed logical that large expenditures would require documentation. Ms. Thompson said that monetary penalties may be warranted for some of the violations.

Mr. Friedman agreed with the other Commission members, saying that candidates had a responsibility to know the requirements and keep records.

Agenda Item #6 – Presentation of Proposed Statutory and Rule Changes

Mr. Wayne said that there was a February 7 deadline to submit statutory changes. Mr. Wayne said that a hearing on proposed rule changes would be scheduled for February.

Mr. Lavin said that the staff proposal would allow party committees to provide assistance in addition to advice to candidates, change the entity from “political party” to “state party committee,” and specify that state party committees were limited to providing 20 hours of assistance per candidate.

Mr. Lavin said that a proposed change would allow radio and television ads to omit the address on the disclosure statement if the candidate financed the expenditure.

Ms. Ginn Marvin asked if any disclosure would be required for an announcement about a candidate receiving an award if there was no express advocacy and it was not a political communication. Mr. Lavin said yes, the proposal would eliminate the requirement to include the address but would not entirely eliminate the disclosure requirement during the presumption period.

Mr. Lavin outlined the following proposed changes to the Commission:

- move the dates when reports must be filed so that matching funds would be based on up-to-date campaign finance information;
- eliminate the requirement for privately financed candidates to file an affidavit stating that they did not exceed 101% of their publicly financed opponent's Clean Election distribution in receipts or expenditures;
- simplify the 24-hour reports;
- clarify record-keeping requirements;
- change the period during which an independent expenditure is presumed to be intended to influence an election to 21 days before a primary election and 60 days before a general election;
- restrict the collection of seed money contributions to Maine residents;
- end the practice of reducing a Clean Election candidate's initial distribution by the amount of unspent seed money remaining;
- require money orders used in collecting \$5 qualifying contributions to be signed by the contributor;
- require gubernatorial candidates to raise a minimum of \$15,000 in seed money as one of the qualifications to receive public funding;

- allow the Commission to revoke a candidate's certification to receive public funding under certain circumstances; and
- allow the Commission staff to audit lobbyists.

Ms. Ginn Marvin asked if candidates could accept cash as a qualifying contribution. Mr. Lavin said they could accept cash by exchanging it for a money order. Mr. Wayne said that a candidate could accept cash if the contributor signs a money order. Mr. Lavin said that the candidate could not submit \$5 in cash to the Commission as a qualifying contribution. Ms. Ginn Marvin said that she recognized the need for a paper trail.

Ms. Thompson asked if the \$15,000 seed money minimum came with any geographic requirement. Mr. Lavin replied that it did not.

Alison Smith of Maine Citizens for Clean Elections said that the Commission should raise the required number of qualifying contributions rather than adding an additional seed money requirement if it wishes a stronger test for a candidate's validity.

Ms. Ginn Marvin moved, Mr. Friedman seconded, and the Commission voted unanimously (4-0) to accept the proposed statute changes and forward the recommendations to the Legislature.

Mr. Lavin outlined the following proposed rule changes for the Commission:

- require the Commission to meet once a month;
- eliminate the requirement that oral complaints be placed on the agenda for the next Commission meeting;
- allow Commission staff to take testimony for an investigation without the testimony being given at a Commission meeting;
- clarify that Commission members may speak to the press about an issue before the Commission after the 30-day period for filing an appeal has ended;

- require the circulator of a qualifying contributions receipt and acknowledgement form to sign the form and include his or her address. (Ms. Gardiner said that the printed name should be included as well);
- require verification of voter registrations to be completed by the certification deadline (Mr. Lavin said that in the future, Commission staff may be able to verify voter registrations by computer);
- end the practice of including unspent primary funds in the calculation of matching funds for the general election;
- provide for the Commission to assess a penalty and require the repayment of funds for undocumented expenditures of Clean Election funds after a hearing has been held;
- allow gubernatorial candidates to withhold a portion of their Clean Election funds at the end of the campaign for the costs associated with the audit; and
- require candidates making mileage reimbursements to use the flat rate and keep a mileage log. Mr. Lavin said that many candidates from the 2006 election were reimbursing themselves or their staff for travel and not keeping mileage logs.

Ms. Ginn Marvin said that the Commission should be able to reschedule meetings due to weather. Ms. Ginn Marvin said that the Commission should not be required to meet monthly if there was a lack of business for it to consider. Ms. Gardiner said that there was not a need for language in the rules specifying these exceptions. Mr. Wayne said that the rules did not reflect the statute's requirement that the Commission meet once a month.

Ms. Ginn Marvin asked if candidates were required to reimburse themselves for travel. Mr. Lavin said they were not.

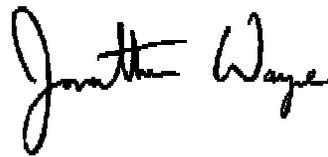
Ms. Thompson left the meeting.

Ms. Gardiner said that some of the proposed rule changes assumed that the proposed statute changes would be adopted by the Legislature. Ms. Gardiner said that the proposed rule changes should be based on the existing statutes.

Ms. Ginn Marvin moved, Mr. Friedman seconded, and the Commission voted unanimously (3-0) to accept the proposed rules for public comment.

Mr. Wayne said that the hearing on the proposed rule changes would be held on February 14 at 9:00 a.m., followed by the Commission's regular meeting.

Respectfully submitted,

A handwritten signature in black ink that reads "Jonathan Wayne". The signature is written in a cursive style with a large, looped initial "J".

Jonathan Wayne
Executive Director