



Minutes of the March 6, 2019 Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: William A. Lee III, Esq., Chair; Hon. Richard A. Nass; Meri N. Lowry; Bradford A. Pattershall, Esq.

Staff: Jonathan Wayne, Executive Director; Phyllis Gardiner, Counsel

Mr. Lee convened the meeting at 9:06 a.m.

In keeping with past practice, the Commission took an agenda item out of order to accommodate members of the public attending the meeting.

4. Request for Waiver of Late-Filing Penalty – James LaBrecque

Mr. Wayne stated James LaBrecque was a replacement candidate for State Senate District 9 in the 2018 general election. During the evening of December 18, 2018, the deadline for filing the 42-Day Post-General Report, his treasurer entered expenditures in the Commission's e-filing system. However, he was unable to file the report by the deadline because he had logged into the e-filing system using the candidate's user name and password. MCEA candidates cannot file their own reports. The treasurer or other authorized user must file the report. The treasurer filed the report the next day (one day late) after calling the Commission office for assistance. The preliminary penalty is \$235.03. The staff did not recommend a waiver or reduction of the penalty.

Mr. James LaBrecque told the Commission his first treasurer stepped down from that position and his current treasurer, Michael Capeci, took over after the general election in November. His treasurer did the best he could and fully intended to file the report on time; however, they were both unaware the treasurer could not file the report while logged into the system with the candidate's login credentials. As soon as he realized there was a problem, Mr. Capeci sought assistance from the Commission staff the day after the filing deadline.

In response to a question from Mr. Lee, Mr. Wayne said that Mr. Capeci was appointed treasurer on November 11, 2018, right after the general election. Mr. Lee asked what prohibited the

treasurer from filing sooner. Mr. LaBrecque explained due to vacation breaks from college and his academic responsibilities, Mr. Capeci may have left filing the report to the last moment.

Mr. Lee made a motion to adopt the statutorily calculated penalty of \$235.03 as recommended by the Commission staff. Mr. Nass seconded. The motion passed (4-0).

Mr. Nass pointed out that replacement candidates come into the race with just three months before the general election and have a very short time frame in which to learn everything they need to know about filing reports while running a campaign at the same time.

1. Ratification of Minutes of December 19, 2018 Meeting

Mr. Nass moved to accept the minutes of the December 19th meeting as printed. Mr. Lee seconded. Ms. Lowry said that, as she is no longer an actively-practicing attorney, the suffix Esquire should no longer be added to her name. The motion passed (4-0).

2. Public Hearing – Proposed Rule Changes

The Commission held a public hearing to receive comments on proposed changes to the Commission's Rules concerning reporting campaign debts and disclosure of travel costs and other gifts received by officials. Mr. Lee invited the public to speak before the Commission.

Mr. Robert Howe said he often appears before the Commission on behalf of the Maine Citizens for Clean Elections and the League of Women Voters; however, he has not been authorized by them to address the proposed rules. He said he would offer his own views based on his experience. Mr. Howe stated he believed the proposal regarding debt reporting would be helpful by potentially reducing the reporting burden on some candidates without sacrificing transparency and avoiding some of the late-filing waiver requests. The proposed rule regarding the disclosure of gifts by legislators and executive branch officials would increase transparency.

No other members of the public commented. Mr. Lee closed the public hearing on the proposed rules.

3. Request for Waiver of Late-Filing Penalty – Cathleen Nichols

Mr. Wayne explained Cathy Nichols was a first-time candidate in 2018, originally running for House of Representatives and then as a replacement candidate for State Senate District 25 in the 2018 general election. On October 30, 2018, her campaign purchased a direct mail piece for \$3,900. This expenditure was required to be reported in a 24-Hour Report on October 31st. Her

treasurer, Scott Kerr, was not made aware of the expenditure at that time. As he was preparing to file the post-election report due on December 18, 2018, he became aware of the expenditure and that it should have been reported in a 24-Hour Report. The preliminary penalty for filing the report 48 days late is \$3,744. In her waiver request, Ms. Nichols stated that she was a first-time candidate and misunderstood the 24-hour reporting requirement. She also stated the last two weeks before the general election were very intense and stressful. The staff recommended the penalty be reduced to \$400.

Ms. Cathleen Nichols told the Commission she took responsibility for not getting the receipts to her treasurer in a timely manner. In response to a question from Mr. Lee, Ms. Nichols said she had been aware of the 24-hour reporting requirement, but she forgot about it because she was so involved in the campaign as it got closer to the general election.

Mr. Nass made a motion to adopt the staff recommendation of a civil penalty of \$400. Mr. Lee seconded. The motion passed (4-0).

5. Request for Waiver of Late-Filing Penalty – Mark Remick

Mr. Wayne stated Mr. Mark Remick was a candidate for State Representative in District 132. On October 30 and November 1, 2018, his campaign ordered radio ads and mailers costing \$1,602.69 and \$1,180.00, respectively. He was required to report each debt the next day in a 24-Hour Report. He reported the expenditures on December 7, 2018, when he paid for the services. The preliminary penalties for the two late reports total \$2,011.85. In his waiver request, Mr. Remick stated he thought expenditures only needed to be reported when invoices were paid and he was not aware that incurring a debt was a kind of expenditure that should be reported in a 24-Hour Report. In response to a question from Mr. Lee, Mr. Wayne confirmed that even though each late-filed report is a separate violation, for the purposes of calculating the penalty rate, they are treated as a single violation because the late-filings occurred on the same date, December 7th.

Mr. Remick appeared before the Commission. Mr. Lee asked Mr. Remick how the misunderstanding about the reporting requirement arose. Mr. Remick said he and his treasurer discussed the matter and his treasurer thought it was not necessary to report the expenditure until it was paid. In response to a question from Mr. Nass, Mr. Remick explained that his treasurer had some previous experience with campaign finance reporting when he was a candidate for county office.

Mr. Lee said he was comfortable with the staff recommendation for a reduction in penalty and treating the two violations as one, especially since the two expenditures were made so close in time. If there had been more time between the two, he said he may view the matter differently.

Mr. Pattershall made a motion to adopt the staff recommendation of a total civil penalty of \$400 for the violations. Mr. Lee seconded. The motion passed (4-0).

6. Request for Waiver of Late-Filing Penalty – New Mainers PAC

Mr. Wayne stated on November 1, 2018, the New Mainers PAC received two contributions of \$5,000 and \$7,000. The PAC was required to disclose them the next day in a 24-Hour Report but was unaware of the requirement. The PAC eventually filed the 24-Hour Report on December 17, 2018 when it was preparing the regularly scheduled 42-Day Post-General Report. The preliminary penalty is \$10,000, which is the maximum penalty allowed under the law. The staff thought the penalty is disproportionate to the amount to the harm to the public and recommended a penalty of \$1,000.

The chair of the New Mainers PAC, Mr. Abdifatah Ahmed, addressed the Commission. Mr. Ahmed explained the New Mainers PAC has been operating for three years and learning how to be a part of the political system in Maine, but has had minimal financial activity over the past three years. Part of their initiative is to educate new Mainers on the process of voting, as well as to help and encourage new Mainers to vote. This was the first time the PAC received such a large contribution so close to the election. The PAC was not aware of the 24-hour reporting requirement. When they found out they had incurred a penalty, they were shocked and immediately found assistance to train the PAC on how to comply with their reporting responsibilities.

Mr. Nass noted that the purpose of the 24-hour reporting requirement was to inform the public of significant amounts of money being contributed or spent close to an election. This reporting requirement is especially important when significant contributions are made by out-of-state groups which do not have a requirement to file their own reports with the Commission.

Mr. Lee asked why no one from the PAC called Commission staff to inquire about reporting these contributions. Mr. Ahmed explained they truly were not aware of the requirement and, during the period before the election, were busy helping new Mainers to vote and working on other PAC-related activities.

Mr. Pattershall said the failure to report the \$7,000 contribution from America Votes resulted in greater harm to the public because it is not reported anywhere else, in contrast to the \$5,000 contribution from the Maine Democratic Party, which was reported in a 24-Hour Report filed by the Party.

Mr. Nass made a motion to adopt the staff recommendation of \$1,000 fine for the late filing of a 24-Hour Report. Mr. Lee seconded. The motion passed (4-0).

7. Maine Clean Election Act Violation – John R. Clark

Mr. Wayne said Mr. John R. Clark, a candidate for State Representative in District 105, qualified for Maine Clean Election Act (MCEA) funding in April 2018 at which point he was prohibited from raising or spending private contributions. However, during the summer of 2018, he continued to collect four seed money contributions of various amounts between \$10 and \$50 for a total of \$105. Mr. Clark told Commission staff he believed he could continue to collect seed money contributions even after qualifying for MCEA funds. Mr. Wayne said this was a violation of the Maine Clean Election Act and a penalty is warranted to impress on candidates the importance of learning the requirements of participating in the MCEA program. He said Mr. Clark did not try to conceal that he had received the contributions and, in fact, he had included them in reports filed with the Commission. The staff recommended a finding of a violation of the seed money restriction and assessing a penalty of \$400.

Mr. Lee asked whether it would be possible to add some alerts to the e-filing system that would flag this kind of problem for the candidate and treasurer and the Commission staff. Mr. Wayne said that would be possible. There are other system warnings such as when someone enters an over-the-limit contribution. He said he would explore the options with the staff.

Mr. Clark told the Commission he misunderstood the restriction on collecting seed money and that he takes responsibility for his mistake. Mr. Lee asked why Mr. Clark thought he could still receive funds after he was certified. Mr. Clark did not make the connection and thought he could continue to raise seed money until he reached the \$1,000 maximum for House candidates. In response to a question from Mr. Nass, Mr. Clark said he understood the seed money contributions he collected were separate from and not connected to the additional qualifying contributions he collected to be eligible for supplemental funds.

Mr. Lee said the Commission is given wide latitude in setting penalties for violations of the Maine Clean Election Act. If he thought there was any intentional fraud in this case, he would consider a much higher penalty than the staff's recommendation. However, both Mr. Clark and his treasurer have been completely forthcoming in their explanations about the seed money contributions. Mr. Lee said he did not find any intent to deceive or conceal on the part of the candidate.

Ms. Lowry asked Mr. Wayne what happened to the \$105 in seed money contributions. Mr. Wayne explained that Mr. Clark returned slightly over \$200 to the fund after the election and the \$105 could be considered a part of that returned amount. Ms. Lowry said she was satisfied that the contributions were turned over to the fund.

Mr. Pattershall said that he also did not see any willful intent to violate the Maine Clean Election Act.

Mrs. Beth Clark, the campaign treasurer, said her job was to stay on top of all the campaign's financial activity. However, due to a family health situation, she said it was difficult to give full attention to those duties.

The Commissioners discussed setting a lower penalty than the staff recommendation. Ms. Lowry said Mr. Clark showed that he was frugal when it came to the public's money. He decided not to get an extra supplemental payment even though he was eligible for one because he did not think it would make a difference in his race. She said that was meaningful factor in her consideration of this matter.

Mr. Lee said a penalty of \$250 would make a statement that this is a serious violation but also would recognize the facts of this situation where there was no intent to conceal and was the result of a misunderstanding of the law.

Mr. Pattershall said he agreed that a civil fine of \$250 is appropriate. Mr. Nass and Ms. Lowry also agreed.

Mr. Lee moved to assess civil penalty of \$250 for this violation, and that the penalty is as low as it is because the violation was the result of a purely innocent mistake. The motion was seconded by Mr. Nass. The motion passed (4-0).

8. Potential Change to Statutory Proposal – Commissioners’ Terms

Mr. Lee said he proposed this change in order to clarify what happens when a Commissioner is appointed to fill a vacancy. The Legislature intended a Commissioner to be able to serve two three-year terms, for a total of six years. Under the original statutory proposal, it would be possible that a Commissioner who was filling out an unexpired term of one year exactly could only serve one more term – four years in total. Under his proposed change, a Commissioner would have to serve more than two years of an unexpired term for it to be considered a full term.

The Commissioners agreed to submit the change to the statutory proposal to the Legislature.

Mr. Nass moved to adjourn. Mr. Pattershall seconded. The motion passed (4-0).

The meeting adjourned at 12:31 p.m.

Respectfully submitted,
/s/ Jonathan Wayne
Jonathan Wayne, Executive Director