



Minutes of the July 30, 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; Bradford Pattershall, Esq., and Meri N. Lowry

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

Mr. Lee convened the meeting at 9:00 a.m.

1. Ratification of Minutes of April 24, and June 4, 2019 Meetings

Mr. Lee stated the reason there were two sets of minutes before the Commission is that the original draft of the April minutes did not reflect comments made by Mr. Nass regarding a proposed rule amendment and those changes have been made in the April minutes. Ms. Lowry said the omission was due to the technical errors encountered with the audio from the April 24th meeting. Mr. Lee noted there was only one other minor correction in the last paragraph on page 2 to change “legislature” to “legislators.”

Mr. Lee made a motion to adopt the April 24th and June 4th minutes. Mr. Nass seconded the motion. Mr. Pattershall noted that he had not been present at the April meeting. Mr. Lee said since the vote was not on a substantive matter, Mr. Pattershall should not be precluded from voting on the motion.

The motion passed (4-0).

2. Update on Transition and Inaugural Committees

Mr. Lee stated the Commission had an extensive discussion about this matter at its June meeting and decided to postpone taking any action regarding it while the Mills inaugural committee sought to resolve outstanding obligations.

Mr. Wayne said the inaugural committee filed a disclosure statement on July 29th. Michael Carey, the committee’s attorney, also sent two letters updating the Commission on the committee’s activities. After the Legislature adjourned *sine die* on June 20th, the committee has

received \$10,500 in donations. In his update letter, Mr. Carey informed the Commission that the committee has received pledges in the amount of \$81,000.

In response to a question from Mr. Nass, Ms. Gardiner explained the legislative session ends when the Legislature adjourns *sine die*. The first regular session of the current Legislature ended on June 20th.

Mr. Wayne explained that the lobbying year ends on November 30th of each year and a new lobbying year begins on December 1st. Companies and organizations may make a donation to the transition and inaugural committees provided they do not employ a lobbyist who is registered with the Commission at the time of the donation.

Michael E. Carey, Esq., appeared before the Commission on behalf of the Mills inaugural committee. Mr. Carey said the committee has decided not to contest the amount of the invoice from the Augusta Civic Center. He confirmed that the committee has received \$81,000 in pledges and that if that amount is received, the committee will be able to pay all outstanding obligations, including the Augusta Civic Center invoice.

Mr. Lee asked whether the committee would have to continue fundraising if the \$81,000 pledged was a solid number. Mr. Carey said the committee would continue to fundraise until it is clear that a sufficient amount has been received to cover outstanding obligations and expenses related to fundraising and legal fees. Mr. Carey said he could not estimate when the committee will complete its fundraising efforts.

Mr. Nass said he was concerned by the uncertainty about when the committee's fundraising activities will end. The statute is clear that fundraising should have ended at the end of January and the committee's ongoing fundraising is in violation of the statute. Mr. Nass said he heard from people who wanted to donate after the election but who were not approached by the committee and it was not clear to them how to go about making a donation. He said the committee missed opportunities to raise funds right after the election when people were willing and able to do so.

Mr. Carey explained there are a number of factors beyond the control of the committee that bear upon the pace of its solicitation process, *e.g.*, the lobbyist prohibition, and the receipt of donations, *e.g.*, the internal processes of businesses and organization to approve the donation.

Mr. Pattershall asked whether the shortfall was entirely due to the Augusta Civic Center invoice being \$62,000 higher than expected. Mr. Carey confirmed that was the cause of the shortfall. But for that, the committee would have been able to meet all its obligations and file its final disclosure statement by February 15th. The committee could have paid the original contracted amount of \$132,000 to the Civic Center by February 15th. However, it did not because it was necessary for the committee to retain sufficient funds to continue its operations and because, at that time, the committee was considering its options regarding legally contestable portions of the Civic Center invoice.

Ms. Lowry said she was concerned that the Commission was reviewing certain issues that are beyond its purview by questioning the committee's decisions and strategy. The Commission's purview extends to ensuring disclosure and transparency. The committee has consistently been transparent with regards to its activities and has disclosed those activities to the public and the Commission.

Mr. Lee said the Commission has an additional duty to ensure compliance with the law. Looking into the reasons why the committee has not been compliant is relevant to fulfilling the Commission's duty. The sooner this matter can be resolved, the lesser the violation.

Mr. Lee and Mr. Pattershall said they were not inclined to take action until the committee has resolved all its outstanding obligations. Mr. Lee said the committee's fundraising is going on longer than expected and an open-ended timeframe is not acceptable. Mr. Lee suggested that the committee provide another update at the next meeting at which time the Commission could discuss whether to impose a penalty and how to determine a penalty amount.

Mr. Lee moved that the Commission continue consideration of the matter involving the Governor's inaugural committee until the next scheduled meeting of the Commission. Mr. Nass seconded.

The motion passed (4-0).

The Commissioners discussed the proposed changes to the law governing gubernatorial transitions presented by the staff. The record of the discussion is under Other Business.

3. Update on Audits of 2018 Maine Clean Election Act Candidates

Jennifer Connors and Marcus Pratt of Runyon Kersteen Ouellette (RKO) appeared before the Commission to provide an update on the progress of the post-election audits of 2018 Maine Clean Election Act (MCEA) candidates. Forty-eight legislative and three gubernatorial candidates have been selected for audit. As of the date of the July 30th meeting, forty-two final audit reports have been completed. Four draft reports will be finalized in the next couple of weeks. RKO is waiting for more information from a couple of candidates. Twenty-three audit reports have been presented to the Commission for this meeting. Ms. Connors said sixteen audits have exceptions. The exceptions include minor reporting errors, unreported transactions, unpaid debts that should have been previously reported, and missing documentation such as receipts or contracts. She also stated three candidates have findings and seven have no exceptions or findings.

One of the three findings involved a candidate who collected more seed money than initially reported. Some of the seed money contributions were collected after the candidate's certification. Another candidate withdrew funds from the campaign bank account to buy money orders for qualifying contributions; however, the cash collected from the contributors in exchange for the money orders was never deposited in the campaign account. Another candidate did not reimburse a treasurer for an expense made with the treasurer's personal funds; however, that has since been corrected.

Mr. Nass said the auditors have done a great job on the reports. He asked the auditors about some of the equipment purchases that were mentioned in some audit reports. Ms. Connors and Mr. Wayne said the purchases were correctly reported. Mr. Nass said there have been some issues in the past with candidates using MCEA funds improperly to purchase equipment that was not related to their campaign.

Mr. Lee thanked Ms. Connors and RKO on the good and valuable work they do.

Ms. Lowry commented that there seems to be fewer findings this year than in the past and credited enhanced communications between Commission staff and candidates for the improvement.

Other Business

Statutory Proposal

Mr. Lee summarized the major changes to the gubernatorial transition law proposed by the staff regarding an extension of the deadline for fundraising from January 31st to March 31st, a provision to allow a committee to request permission to raise funds after March 31st to pay outstanding debts, and the establishment of criteria for assessing a penalty.

Robert Howe, of Howe Cahill & Co., appeared before the Commission on behalf of Democracy Maine, a collaboration between the League of Women Voters and Maine Citizens for Clean Elections (MCCE). Mr. Howe said MCCE played a significant role in the citizen initiative that enacted the law regarding the gubernatorial transition committee. He said it was not contemplated that a Governor-elect would form separate committees for the transition and the inauguration, but they did not think the law precluded it. He said he thought the change requiring a committee to continue filing statements if it had a surplus as of the filing of the February 15th statement seemed open-ended and suggested that there be a set deadline to file a final statement with the option of requesting an extension for cause.

Mr. Pattershall suggested the requirement to file bi-monthly statements if the committee had a cash surplus be changed to apply to outstanding debts as well, as is the case with the Mills inaugural committee.

Mr. Lee moved that the Commission adopt the proposed legislative changes submitted by the staff with an amendment to subsection 3(E) to account for a situation where a committee has a debt at the end of the reporting period for the February 15th statement. Ms. Lowry seconded.

The motion passed (4-0).

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

The meeting adjourned at 11:07 a.m.

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