



Minutes of the May 26, 2021 Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: William A. Lee III, Esq., Chair; David R. Hastings, Esq.; Sarah LeClaire, Esq.; Dennis R. Marble; and William J. Schneider, Esq.

Staff: Jonathan Wayne, Executive Director; Jon Bolton, Assistant Attorney General; and Michael Dunn, Political Committee and Lobbyist Registrar

Commissioner Lee convened the meeting at 9:10 a.m. The meeting was livestreamed via YouTube.

The Commission considered the following items:

1. Ratification of the Minutes of the March 31, 2021 Meeting

Mr. Marble made a motion to adopt the March 31, 2021 minutes as presented. Mr. Schneider seconded the motion. Motion passed 4-0. Ms. LeClaire abstained from voting because she was not present at the March 31st meeting.

2. Complaint – Sanford Democratic Committee

Mr. Wayne summarized a complaint by the Sanford Republican Committee (SRC) alleging that the Sanford Democratic Committee (SDC) was required to file campaign finance reports in 2020, because the SDC had received office space that exceeded the \$1,500 threshold for campaign finance reporting by a local party committee. Through conducting a preliminary investigation, the Commission staff received information indicating that the Maine State Democratic Party had leased the property and had disclosed the rental payments in Federal Election Commission reports. Mr. Wayne said that the statutory definition of “contribution” exempted the provision of office space and equipment to a party committee if it resulted in no additional cost to the provider.

The SDC had responded that it did not have to file campaign finance reports in the past several years, because it had not received or spent more than \$1,500 in a calendar year. Rachel Sherman, SDC Chair, appeared before the Commission. Ms. Sherman said the SDC had not raised very much money in 2020 because of COVID.

James Deyermond, SRC Chair, appeared before the Commission. Mr. Deyermond said he filed the complaint because his committee had reported their headquarters as an in-kind contribution, but he could not find any reporting by the SDC for their headquarters. He said there were local, state, and

federal signs in the windows of the office space, but he could not find any information about who owned, rented, or leased the space.

The Commissioners discussed information gathered by the Commission staff during its preliminary investigation concerning who had paid for the space.

Mr. Lee made a motion that based on the evidence presented, there were insufficient grounds to support an investigation of the complaint made by the SRC. Mr. Schneider seconded the motion. Motion passed 5-0.

3. Late Major Contributor Report: Liberty Initiative Fund & We the People PAC

This enforcement matter concerned contributions in October-November 2020 by Liberty Initiative Fund – Maine PAC to We the People PAC. Because the contributions totaled more than \$100,000, We the People PAC was required to send a written notice to Liberty Initiative Fund that it needed to file a major contributor report with the Commission. Mr. Lee noted that a representative for Liberty Initiative Fund was present, but no person was participating for We the People PAC. The Commission adjourned briefly so that Commission staff could contact an officer of We the People PAC. Staff did not reach anyone right away, but partway through the discussion State Rep. William Faulkingham joined the meeting on behalf of We the People PAC.

Mr. Bolton disclosed that he was the counsel of record representing the Secretary of State's office in litigation involving Liberty Initiative Fund and We the People PAC. He said he had not had any discussions with the Commissioners or Commission staff regarding this matter. He said he was removing himself from the Commission's consideration of this matter of a late written notice. If the Commission needed legal guidance, another Assistant Attorney General could be present for the next Commission meeting.

Mr. Wayne said Liberty Initiative Fund made three contributions to We the People PAC in October-November 2020. The third contribution on November 3, 2020 brought the aggregate total above \$100,000, which triggered a requirement for We the People PAC to send a written notice to Liberty Initiative Fund that it must file a major contributor report by November 15, 2020. The major contributor report was not filed until April 2021, after the Commission staff had followed up with the Liberty Initiative Fund to file the report. Prior to the meeting, Liberty Initiative Fund had advised the Commission that it never received the written notice from We the People and was not aware of the major contributor filing requirement. In responding to the complaint, Rep. Justin

Fecteau of We the People PAC had stated that he had mailed the written notice to Liberty Initiative Fund but did not keep a copy of it or any record of the mailing.

Paul Jacob, president of Liberty Initiative Fund, appeared before the Commission. He said he did not doubt that We the People had mailed the notice, but he never received it. He said it was possible it might still be delivered because mail delivery has been very slow, his office had moved, and it was possible the mail forwarding order had expired. He said he was surprised there was no reminder from the e-filing system about filing this report.

Rep. William Faulkingham, treasurer for We the People PAC, commented that he did not believe the PAC should be found in violation because We the People PAC had reported receiving the contribution from Liberty Initiative Fund in a 24-Hour Report on November 3, 2020. He said We the People PAC had mailed the notice to Liberty Initiative Fund on November 6, but he should have been diligent in following up with Liberty Initiative Fund.

During the Commission's discussion, some members indicated the late major contributor report by Liberty Initiative Fund had caused little harm to the public because Liberty Initiative Fund had registered and filed campaign finance reports as a PAC. The Commissioners noted We the People PAC had failed to file the written notice with the Commission, as required by law. The Commissioners commented that We the People PAC should have followed up with Liberty Initiative Fund about receipt of the notice. The Commissioners discussed the mailbox rule (a presumption that mailed correspondence was delivered) and whether it applied to this matter. The Commission staff said it was in the process of updating its written guidance on the major contributor reporting requirements which may reduce the risk of this type of situation in the future.

Mr. Lee made a motion to find a violation of 21-A M.R.S. § 1060-A(2) by We the People for failing to provide a copy of the written notice to the Commission. Mr. Schneider seconded the motion. Motion withdrawn.

Mr. Lee made a motion to find that We the People violated the notice requirements of 21-A M.R.S. § 1060-A(2) by failing to provide a copy of the required Notice to Major Contributor to the Maine Ethics Commission itself as required by 21-A M.R.S. § 1060-A(2). Mr. Schneider seconded the motion. Motion passed 5-0.

Mr. Lee made a motion to impose a penalty of \$2,500 for the violation by We the People PAC. Ms. LeClaire seconded the motion. Motion passed 3-2 (Mr. Hastings and Mr. Schneider opposed).

Mr. Lee made a motion to find no violation on the part of Liberty Initiative Fund. Mr. Marble seconded the motion. Motion passed 5-0.

4. Compliance Review of 2020 Leadership PACs

Michael Dunn, Political Committee and Lobbyist Registrar, provided the first of two reports to the Commission on the results of enhanced compliance reviews of 2020 leadership PACs. The review covered fifteen PACs. Mr. Dunn presented the results for ten PACs in this first presentation.

On December 8, 2020, Mr. Dunn requested bank statements and receipts/invoices from all fifteen PACs. He compared the PACs' actual financial activity to the PAC's transactions disclosed in campaign finance reports. He flagged issues for appropriate follow up. In his correspondence to the PACs, small deviations were noted as exceptions, and other issues were noted as potential violations. Mr. Dunn requested additional information by March 23, 2021. The issues he found included omitted transactions, other reporting discrepancies, and failure to keep receipts. The Commission received the results of the ten PAC reviews and took no further action. Mr. Dunn said that the results for the remaining five PACs would be presented at the Commission's June or July meetings.

5. Results of Investigation – Working Families PAC and Diane Russell

Mr. Wayne summarized the results of an investigation concerning Diane Russell, a former State Representative, candidate for Governor in 2018, and principal officer for the Working Families PAC. In September 2020, Eiranne Hart, the former treasurer for the PAC, informed Commission staff that she did not have access to the PAC bank account and was unable to confirm the PAC balance, but did not believe the calculated balance in the financial summary in the latest campaign finance report was accurate. Ms. Hart subsequently resigned as treasurer for the PAC. Commission staff attempted to contact Ms. Russell to request she appoint a replacement treasurer. Ms. Russell did not respond. In 2020, the PAC stopped filing campaign finance reports and five reports were now outstanding. In addition, Ms. Russell failed to file the January 2021 Semiannual Report for her 2018 gubernatorial campaign. Commission staff made numerous attempts to contact her by email, telephone, regular and certified mailings; none of which were successful. Commission staff was provided an updated address for Ms. Russell through voting records and arranged for her to be personally served with a penalty notice by the Cumberland County Sheriff's Office. As part of its investigation, Commission staff reviewed bank statements for 2018-2020, and discovered the PAC bank account had been closed by the bank due to a negative balance in October 2018. Ms. Russell

mailed a letter received the day before the Commission meeting that requested a continuance of this matter until September due to a health issue.

The Commissioners expressed concern that the source of the \$13,000 discrepancy in the PAC's balance was still unresolved because it predated the bank records reviewed by Commission staff. The Commissioners agreed to continue the investigation to identify the source of the discrepancy. The Commissioners also discussed Ms. Russell's request for a continuance and the suggestion by staff to administratively dissolve the Working Families PAC by deactivating its account in the Commission's e-filing system and contacting ActBlue to suggest terminating the online donation function for the PAC.

Mr. Lee made a motion to impose five penalties of \$750 each, for a total of \$3,750, pursuant to 21-A M.R.S. § 1062-A(8-A) for not filing five campaign finance reports due at deadlines set out in 21-A M.R.S. § 1059(2). Mr. Hastings seconded the motion. Motion passed 5-0.

Mr. Lee made a motion to impose a penalty of \$500 pursuant to 21-A M.R.S. § 1062-A(1) for failing to provide updated information as required in the PAC statute (name and address of financial institution, account name, address for principal officer, and name and address of treasurer). Mr. Marble seconded the motion. Motion passed 5-0.

Mr. Lee made a motion to impose a penalty of \$750 pursuant to 21-A M.R.S. § 1020-A(8-A) for not filing a campaign finance report in connection with Diane Russell's 2018 campaign for governor, which was due on January 18, 2021, under 21-A M.R.S. § 1017(2)(F). Mr. Hastings seconded the motion. Motion passed 5-0.

Mr. Lee made a motion to authorize an investigation of the records of the Working Families PAC from May 22, 2013 to the present to determine the cause of the discrepancy between the reported balance in the account and the actual balance. Mr. Marble seconded the motion. Motion passed 5-0.

Mr. Lee made a motion to authorize Commission staff to administratively dissolve the Working Families PAC. Mr. Marble seconded the motion. Motion passed 5-0.

Mr. Lee made a motion that the findings of violations and the penalties imposed in previously passed motions against Diane Russell are also found and imposed against the Working Families PAC. Motion withdrawn.

Mr. Lee made a motion that the findings of violation and penalties in the first two motions the Commission passed concerning Diane Russell also apply to the Working Families PAC. Motion withdrawn.

Mr. Lee made a motion that the findings of violation and penalties imposed against Diane Russell that were passed in the first two motions, apply jointly and severally to Diane Russell and the Working Families PAC. Mr. Hastings seconded the motion. Motion passed 5-0.

Adjournment

Mr. Hasting made a motion, seconded by Mr. Marble, to adjourn. The motion passed. The meeting adjourned at 1:00 p.m.

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