



Minutes of the May 6, 2022 Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: William J. Schneider, Esq., Chair; David R. Hastings, Esq.; Sarah LeClaire, Esq.; and Dennis R. Marble. Stacey D. Neumann, Esq. participated by Zoom.

Staff: Jonathan Wayne, Executive Director; Jonathan R. Bolton, AAG; Erin Gordon, Candidate Registrar; and Emma Gordon, PAC and Lobbyist Registrar.

Commissioner Schneider convened the meeting at 9:11 a.m., which was livestreamed via YouTube.

The first order of business was to select a new chair for the Commission due to the departure of former Commissioner Lee. Mr. Hastings moved to make Mr. Schneider chair of the Commission. Mr. Marble seconded the motion. Motion passed 5-0.

The Commission considered the following appeals of determinations by the Commission staff denying candidates Maine Clean Election Act funding. These hearings were conducted in accordance with the Administrative Procedure Act, 5 M.R.S. §§ 9051-9063; the Maine Clean Election Act, 21-A M.R.S. §1125(14); and the Ethics Commission Rules, Chapter 2. The candidates in these cases have the burden of proving that the determination by the Commission staff was in error as a matter of law or was based on factual error.

1. Appeal of Staff Determination on Maine Clean Election Act Funding – Kathleen Shaw

Mr. Wayne explained that Ms. Shaw is a candidate for State House District 88 and appealed a determination by the Commission staff that she did not collect sufficient valid qualifying contributions to receive Maine Clean Election Act (MCEA) funding. As a House candidate she must obtain 60 qualifying contributions (QCs) during the qualifying period from registered voters in her district. The qualifying period ended at 5:00 p.m. on April 20, 2022. Although the candidate had 63 QCs on her list electronically submitted to the Commission, staff determined

that only 59 of those were valid because two were not registered voters, one was a duplicate, and one cash contribution was signed for by a spouse, rather than the contributor.

Attorney Ben Grant represented Ms. Shaw at the hearing and explained that this was a classic case of a lack of common-sense standard in the system and indicated that the contributor who didn't sign the QC form, Ms. Poisson, did intend to support Ms. Shaw. She was not present when the contribution was given, which was supported by an email communication. He said that signing documents for a spouse is commonplace, and not something that the Commission should view as suspicious, but rather a clear intent to support the candidate and get her MCEA funds.

Mr. Wayne described in detail the methods used by Candidate Registrars to review the 20,000 QCs received by the April deadline, and the importance placed on the laws and rules governing this process. The staff strictly interprets the law and does not grant exceptions or fixes to submissions after the April 20th deadline. Mr. Wayne pointed out that when the Commission starts making exceptions to these cases, it will have the unintended consequence of making the program harder to administer in the future.

The Commissioners discussed their concerns about granting an exception without the authority to do so under statute and rule. Additionally, they commented that the statute does not provide any wiggle room for another person to sign the Commission's forms unless they are incapacitated and unable to sign a document.

Mr. Schneider moved to deny Kathleen Shaw's request for appeal. Mr. Hastings seconded the motion. Motion passed 5-0.

2. Appeal of Staff Determination on MCEA Funding – Eric Rojo

Mr. Wayne explained that Mr. Rojo is a candidate for Senate District 8 and appealed a determination by the Commission staff that he did not collect sufficient qualifying contributions to receive MCEA funding. As a Senate candidate, he must obtain 175 QCs during the qualifying period from registered voters in his district. The qualifying period ended at 5:00 p.m. on April 20, 2022. The candidate submitted the names of 205 QCs on his list electronically submitted to the Commission, however, staff found that only 140 were valid - 58 were not verified voters, three made duplicate contributions, two were missing the cash QC forms, four signatures did not match those on the voter's registration card.

In this case, the candidate said that his campaign did not understand the online QC verification process, which requires candidates to print off forms of unverified voters, bring them to the town clerks for verification, and providing those forms to the Commission before the close of the qualifying period.

Mr. Wayne provided an extensive history about the online QC site, how it had evolved over time, its success rate of verifying voters 90-95% of the time, and issues that could prevent it from verifying a voter. He described the information Commission staff gives to candidates advising them of the QC process and how to address voter verification issues, including checklists, the MCEA Guidebook, the MCEA Quick Guide, emails from Candidate Registrars leading up to the filing deadline, and the Request for Certification form.

Mr. Rojo and his campaign manager, Mr. Sheldon Hannington, appeared before the Commission and took responsibility for the failure to submit registration verifications by the town clerks before the deadline. However, they took issue with the number of names rejected from the QC site. They said the Commissioners should consider their good-faith effort to collect MCEA contributions and that the ability for the Commission to rule in their favor in this case is too narrow under the law. Mr. Hannington went on to state that there may be problems with the QC site that need to be addressed to avoid so many rejections in the future.

Mr. Schneider made a motion to deny Mr. Rojo's request for appeal. Mr. Marble seconded the motion. Motion passed 5-0.

3. Appeal of Staff Determination on MCEA Funding – Patricia Kidder

Mr. Wayne explained that Ms. Kidder is a candidate for House District 141 and appealed a determination by Commission staff that she did not qualify for MCEA funding because she did not submit a Request for Certification (RC) form as required by Commission rules. She did submit all other necessary paperwork, voter verification, and QCs to become an MCEA candidate. All materials to request MCEA certification, including the RC form were due to the Commission by 5:00 pm. on April 20, 2022 or must be postmarked April 20, 2022. Commission staff provided all candidates with information about how to request certification through email, the MCEA Guidebook, among others. Although staff acknowledge this was not an intentional oversight, they are bound by the rules and statute governing the MCEA process.

Ms. Kidder acknowledged her failure to file the RC form, and that it was an oversight brought on by a variety of factors with her campaign and deadlines around the same time with her small business as a tax preparer. She asked that the Commission consider these circumstances and that she did everything else necessary to qualify to show support for her running as a MCEA candidate.

Mr. Schneider moved to deny Patricia Kidder's request for an appeal. Mr. Hastings seconded the motion. Motioned failed 2-3.

Mr. Marble moved to grant Patricia Kidder's request for an appeal. Ms. LeClaire seconded the motion. Motion passed 3-2.

Other Business

None.

Adjournment

The meeting adjourned at 12:25 p.m.

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