



Minutes of the December 21, 2022 Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: William Schneider, Esq., Chair; Dennis Marble; David Hastings, Esq.; Sarah LeClaire, Esq. and Stacey Neumann, Esq.

Staff: Jonathan Wayne, Executive Director; and Jonathan R. Bolton, Assistant Attorney General.

Commissioner Schneider convened the meeting at 9:00 a.m., which was livestreamed on YouTube.

1. Ratification of the Minutes of the November 30, 2022 Meeting

Mr. Marble moved ratification of the November 30, 2022 minutes. Ms. Neumann seconded the motion. Motion passed 5-0.

2. Rulemaking

The Commission considered amendments to the Commission's Chapter 2 and 3 rules that were proposed in October 2022. The amendments relate to the Commission's hearing procedures and administration of the Maine Clean Election Act program. The Commission staff suggested revisions to the originally proposed amendments in response to comments received. Because the rules are major substantive, the amendments would require approval by the Maine Legislature.

Mr. Schneider moved to adopt the rule amendments. Ms. Neumann seconded. The motion passed 5-0.

3. Proposed Statute Change – Procedures for Independent Expenditure Determination

The Commission considered a proposed statutory change concerning the Commission's procedures for determining that a communication naming a candidate close to an election did not require an independent expenditure (IE) report. Under the proposed change, the Commission's executive director would make the initial determination, which could be appealed to the Commission. Mr. Hastings asked if those requesting an IE determination would be protected from any penalties if a staff decision was overturned by the Commission. Mr. Wayne said the staff intended to address that issue in a rulemaking in 2023.

Ms. LeClaire moved to change the language in 21-A M.R.S. §§ 1019-B(1)(B) & (2). In subsection 1(B), a non-express advocacy communication would require an independent expenditure report unless the person that financed the communication demonstrated that the expenditure “did not have a purpose or effect of influencing” a candidate’s nomination or election. In subsection 2, the person requesting a Commission determination would need to submit a written statement that the cost of the communication was not incurred “with a purpose of influencing” a candidate’s nomination or election. The Commission would determine whether the cost was incurred “with a purpose of, or had the effect of, influencing” a candidate’s nomination or election. The reasonable person test to be applied by the Commission would include the same standard as for the Commission’s determination. Ms. Neumann seconded the motion. The motion passed 5-0.

4. Request for Waiver of Late Filing Penalty: Hon. Matthea Daughtry

Sen. Matthea Daughtry’s campaign requested a penalty waiver for the late filing of her 11-Day Pre-General Report, which was due at 11:59 pm on October 28, 2022. The report was filed shortly after midnight on October 29. The preliminary penalty was \$658.21.

Sen. Daughtry explained that she worked with Benjamin Gagnon, who filed her reports. On the evening of deadline, Mr. Gagnon had a family emergency. Sen. Daughtry attempted to file the report but the Commission’s eFiling system does not allow for that because of the restriction in law that a Maine Clean Election Act candidate may not file their own campaign finance reports.

Mr. Schneider moved to reduce the penalty to \$300, as recommended by staff. The motion failed due to the lack of a second.

Ms. Neumann moved to reduce the penalty to \$150. She said that Sen. Daughtry made a good faith effort to file the report. The report was only 13 minutes late, which resulted in limited harm to the public. The candidate tried to file the report but was prevented because of restrictions in the Commission’s eFiling system. Mr. Marble seconded the motion. The motion passed 5-0.

5. Request for Waiver of Late Filing Penalty: Steve LaFreniere

Mr. Wayne stated that on October 14, 2022, Mr. Steve LaFreniere and Ms. Joy Oakes made an expenditure of \$2,478 for signs supporting Paul LePage and opposing Janet Mills. They filed an independent expenditure report 22 days late on November 7, 2022. The preliminary penalty for the late filing was \$1,090. Neither Mr. LaFreniere nor Ms. Oakes participated in the meeting. Their attorney submitted a letter indicating they were unaware of the reporting requirements because they are not involved in politics and were acting on their own.

Mr. Schneider moved to reduce the penalty to \$200. Mr. Marble seconded the motion. The motion passed 5-0.

Mr. Schneider moved to not impose a penalty for the lack of financial disclosure on the signs since they were corrected after notification by Commission staff. Mr. Marble seconded the motion. The motion passed 5-0.

6. Request for Waiver of Late Filing Penalty: York Voter Alliance

York Voter Alliance is a group of York County citizens that purchased signs supporting Governor Janet Mills. The group's leaders were unaware that an independent expenditure report was due within two days of the expenditure. The committee filed the report 44 days late on November 14, 2022. The staff recommended reducing the preliminary penalty of \$672.61 to \$200. The leader of York Voter Alliance, Mr. David Chase, was unable to participate in the Commission meeting but indicated that he was supportive of the reduction to \$200.

Mr. Schneider moved to reduce the penalty to \$200 for the late filing violation. Mr. Hastings seconded the motion. The motion passed 5-0.

Mr. Schneider moved to impose no penalty for the lack of financial disclosure on the signs since they were corrected after notification. Mr. Marble seconded the motion. The motion passed 5-0.

7. Request for Waiver of Late Filing Penalty: Robert McCarthy

Mr. Robert McCarthy was a traditionally financed candidate for House District 93. On October 31, 2022, he paid ADS Marketing \$1,100.31, which required him to file a 24-hour Report. The preliminary penalty for the late filing is \$308.09. Mr. McCarthy explained that he was overwhelmed

by the campaign and personal obligations and was unaware of the 24-hour reporting requirement. When he filed his final campaign report, a red flag popped up on the screen stating a deadline had been missed. Ms. LeClaire asked Mr. McCarthy if he recalled receiving an orange postcard notifying him of the reporting obligations. Mr. McCarthy acknowledged receiving it but did not read the entire card.

Mr. Schneider moved to reduce the penalty to \$300. Mr. Hastings seconded the motion. The motion passed 5-0.

8. Request for Waiver of Late Filing Penalties: Aroostook County Republican Committee

The Aroostook County Republican Committee requested a waiver of late-filing penalties for late filed 11-Day Pre-General and 24-hour reports. Political Committee and Lobbyist Registrar Emma Burke said she sent notifications of the Commission meeting to committee treasurer, who has communicated she could not attend the meeting.

Ms. Neumann moved to postpone this agenda item until the next meeting to allow the committee to participate. Ms. LeClaire seconded the motion. The motion passed 5-0.

9. Request for Waiver of Late Filing Penalty: Androscoggin County Democratic Committee

The county and municipal committees of Maine's political parties must file campaign finance reports if they receive or spend more than \$1,500 in a year. The Androscoggin County Democratic Committee was required to file a 11-Day Pre-General Report on October 28, 2022, but filed it three days. The preliminary penalty of \$99.94.

The committee treasurer, Ms. Mary Rousell, requested a waiver of the penalty through a November 15, 2020 email. She explained that on the deadline she was unsure if a report was required because she had a question about the committee's latest expenditures and believed she needed to communicate with the Commission staff to file the report. At the meeting, Ms. Rousell explained the committee had not filed reports for several years. Mr. Wayne confirmed that a report was required for 2022 because the committee had received \$1,665 in contributions.

Mr. William Schneider moved to not waive the penalty of \$99.94. Mr. Marble seconded the motion. The motion passed 5-0.

Other Business

Prior to the meeting, Mr. Wayne circulated a draft written decision regarding the American Leadership Committee-Maine PAC matter discussed at the November 2022 meeting.

Mr. Hastings moved to approve the written determination and authorize the Chairman to sign it on behalf of the Commission. Ms. Neumann seconded the motion. Motion passed 5-0

Adjournment

Ms. Neumann made a motion to adjourn. Mr. Marble seconded. The motion passed 5-0. The meeting adjourned at 10:49 p.m.

Respectfully submitted,
Jonathan Wayne, Executive Director