



Minutes of the February 24, 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.; Meri N. Lowry; Dennis R. Marble; and William J. Schneider, Esq.

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

Commissioner Lee convened the meeting at 9:06 a.m. The meeting was livestreamed via YouTube.

The Commission considered the following items:

1. Ratification of the Minutes of the December 18, 2020, January 13 and 27, 2021 Meetings.

Mr. Schneider suggested changing the word “a” to “as” at the bottom of page 6, fourth line from the bottom. He made a motion to adopt the December 18, 2020 Minutes with the suggested amendment. Mr. Marble seconded the motion. Motion passed 5-0.

Mr. Schneider made a motion to adopt the January 13, 2021 Minutes. Mr. Lee seconded the motion. Motion passed 5-0.

Mr. Lee made a motion to adopt the January 27, 2021 Minutes. Mr. Schneider seconded the motion. Motion passed 5-0.

2. Request for Waiver of Late-Filing Penalty – Kittery Democratic Committee.

Mr. Wayne said local party committees were not required to file campaign finance reports unless they received or spent more than \$1,500 in a year. Many local party committees did not pass that threshold and did not file campaign finance reports with the Commission. In July of each election year, the Commission staff emailed all local party committee officers to alert them to the filing schedule for local party committees and the \$1,500 threshold for filing. It was the responsibility of the committee officers to contact the Commission staff if they believed they may exceed the \$1,500 threshold and be required to file campaign finance reports. Mr. Wayne said the Kittery Democratic Committee was a local party committee that filed the 2021 January Semiannual Report on January 15, 2021. The Commission staff reviewed the report and determined that, based on the committee’s financial activity, it should have filed the 11-Day Pre-General Report on October 23, 2020. The preliminary penalty was \$500 but the Commission staff recommended the penalty be reduced to \$100.

Ms. Lowry asked Michael Dunn, Political Committee and Lobbyist Registrar, about the reminder email sent to local party committees. Mr. Dunn said the reminder was sent in July. He said only one reminder was sent because there were over 1,600 local committee officers and the level of confusion the email reminder caused. He said the email reminder included a link to the local party committee filing schedule which did indicate that a report may be required in October. He said there had been some discussion about sending a second email in October of election years to limit this type of situation from happening in the future.

Mr. Marble suggested the state party committees could help notify the local party committees about the filing requirements.

Mr. Hastings asked what triggered the filing of the July Semiannual Report. Mr. Dunn said once a committee cleared \$1,500, either by receiving or spending money in a year, it was required to file campaign finance reports for that year. Mr. Hastings asked if the Commission staff knew how many local committees should have filed campaign finance reports but may not have. Mr. Dunn said he did not. Mr. Hastings said it seemed like a trap for the unwary because many of these committees were not registered with the Commission and would not know they had to file campaign finance reports. Ms. Lowry said that was why the penalties for local party committees were reduced so much. Mr. Wayne said many local party committees did file reports with the Commission, so the system did work most of the time. However, there were committee officers who were not aware they were required to file reports. Mr. Lee agreed and said the Commissioners only saw matters when the system did not work.

Lyn Rosoff, chair of the Kittery Democratic Committee, appeared before the Commission. She said she agreed with the Commissioners' assessment of the problem and said if the state or county party committee officials would have mentioned the filing requirements, the committee would not have run into this problem. She said she was relatively new to filing campaign finance reports and had never filed reports in an election year, so she was not aware of the October filing.

Mr. Schneider said he believed the suggestion to have the state parties assist with the notification process was a great idea and recommended the Commission staff follow up on it. Mr. Lee said, in his time on the Commission, he had heard multiple times about how these committees were understaffed, had minimal levels of organization and relatively low funding. He said that was why the Commission had traditionally reduced the penalties by larger than normal amounts.

Mr. Lee made a motion to accept the staff recommendation to reduce the statutorily calculated penalty of \$500 to \$100. Mr. Marble seconded the motion. Motion passed 5-0.

Mr. Wayne said the Commission staff was very receptive to working with the state party committees to get filing notifications out to the local party committees. He said there had been some problems with getting local party committee information from the state parties in the past, but the Commission staff would try to work this out. Going forward, he said the Commission staff would send two reminder emails to local party committees to limit this problem.

3. Request for Waiver of Late-Filing Penalty – Madison Republican Committee of Maine.

Mr. Wayne said this was a similar situation to the prior agenda item. This was the first year that the Madison Republican Committee was required to file reports with the Commission. The committee filed the 2021 January Semiannual Report on January 15, 2021. The Commission staff reviewed the report and determined that, based on the committee's financial activity, it should have filed the 11-Day Pre-General Report in October. The preliminary penalty was \$500 but the Commission staff recommended the penalty be reduced to \$100.

Aaron Rollins, chair of the Madison Republican Committee of Maine, appeared before the Commission. He said the committee was created in February of 2020. He said they reviewed the Commission's reporting requirements at their first meeting and believed they understood what they needed to do. He said they knew they did not have to file in July, but they had not known about the October filing deadline and had filed the January report only. That was when they were notified that they should have filed a report in October. He said they contacted the Commission staff and corrected the problem. He said they were very new and inexperienced, but they would not make this mistake again.

Mr. Marble said they understood the committee was new, recognized their sincerity and that they had tried to do the right thing, but the Commission had to be consistent about the imposition of penalties. Mr. Lee agreed with him.

Diane Pinkham, treasurer for the Madison Republican Committee of Maine, appeared before the Commission. Ms. Pinkham said she thought the error stemmed from the fact that they had checked off the wrong box on the report cover page when they filed the January report, which made it appear the report was late. Mr. Dunn said checking the box did not matter; it was the reported financial activity that had triggered the late-filing penalty.

Mr. Lee made a motion to accept the staff recommendation to reduce the statutorily calculated penalty of \$500 to \$100. Mr. Schneider seconded the motion. Motion passed 5-0.

4. Request for Waiver of Late-Filing Penalty – York Town Republican Committee.

Mr. Wayne said this was a similar situation to the prior two agenda items. The York Town Republican Committee filed the 2021 January Semiannual Report on January 15, 2021, which covered all of 2020. This was the first year the committee had exceeded the \$1,500 threshold and was required to file campaign finance reports. The Commission staff reviewed the report and determined that, based on the committee's financial activity, it should have filed the 11-Day Pre-General Report in October. The preliminary penalty was \$500 but the Commission staff recommended the penalty be reduced to \$100.

Jeff Berlin appeared before the Commission on behalf of the York Town Republican Committee. He said the committee had been dormant for a while but had reorganized this year and elected new officers. The committee had never received or spent more than \$1,500 in a year and, consequently, had never been required to file reports before. No one on the current committee had any experience filing campaign finance reports. He said most of the reported expenditures had been operating expenses that were incurred in the last half of the year. He said he was not sure if the treasurer had received the July reminder email. They had reviewed the filing requirements and knew they needed to file the January report but had not been aware of any other reports that should have been filed before that.

Mr. Lee said he understood it would be crippling to the committee to impose a \$500 penalty but, for consistency purposes, the Commission had to impose a penalty. Mr. Marble said he wanted to reassure Mr. Berlin that their lack of dialogue was not a reflection on the committee but was because they had already heard from two other local party committees today who were in a similar situation.

Mr. Lee made a motion to accept the staff recommendation to reduce the statutorily calculated penalty of \$500 to \$100. Mr. Marble seconded the motion. Motion passed 5-0.

5. Repayment of Maine Clean Election Act Funds – April Turner.

Mr. Lee said notice of the meeting had been sent to Ms. Turner, but she had not responded and was not expected to participate in this meeting.

Mr. Wayne said April Turner was an MCEA candidate for House District 99; this was her third time running as an MCEA candidate. He said Ms. Turner had received \$9,275 for the general election.

Ms. Turner reported two reimbursements to her husband, Craig Turner, for a portion of her home internet and cell phone usage for her campaign. Mr. Wayne said the expenditure guidelines prohibited the reimbursement of day-to-day household expenses, such as rent, electricity, etc. He said Erin Gordon, Candidate Registrar, had contacted Ms. Turner to inform her of this prohibition and Ms. Turner had acknowledged to Ms. Gordon that she understood she would have to return those funds. Additionally, Ms. Turner filed the 42-Day Post General Report one day late; the preliminary penalty for the late-filing was \$152.60. Ms. Turner had not responded to the notice of preliminary penalty by requesting a waiver within 14 days of the notice. As a result, under the statute, the preliminary penalty was final. Mr. Wayne said if the Commission accepted the staff recommendations, Ms. Turner would be required to return \$817.56 to the Maine Clean Election Fund.

Mr. Lee asked for confirmation that the Commission did not need to give any consideration to the late-filing penalty. Mr. Wayne said that was correct. Mr. Lee said under 21-A MRS § 1127 they had the authority to order the MCEA funds be returned and to impose a civil penalty of up to \$10,000 for the failure to return the funds. Mr. Wayne said that was correct. Mr. Lee said notice had been sent to Ms. Turner that the Commission could assess a penalty. Mr. Wayne said that was correct. Mr. Lee said the statute was rather vague about the factors for consideration of a penalty. Mr. Wayne said the only available mitigating factor was if the violation was due to circumstances beyond the candidate's control.

Mr. Schneider said he believed it was incorrect to characterize this as a payment of personal funds to reimburse the State but rather it was a reimbursement of MCEA funds that she should not have spent for personal purposes. Mr. Wayne agreed and said he was trying to convey that the practical effect was that Ms. Turner would have to use her personal funds to return the improperly used MCEA funds.

Mr. Hastings asked if the Commission had imposed a civil fine under § 1127 in the past. Mr. Lee said a few years ago they had assessed a civil penalty against a candidate that had not returned MCEA funds in a timely manner.

Ms. Gordon said she had a telephone conversation with Ms. Turner on December 21. They discussed that the internet reimbursement was an impermissible expense and she asked Ms. Turner if the cell phone cost was different from her regular cell phone bill. Ms. Turner said it was her regular cell phone costs. Ms. Gordon explained that both reimbursements were not allowable

expenses, that Ms. Turner would have to return those funds and Ms. Turner said she understood. Ms. Gordon did tell Ms. Turner that she could arrange for a payment plan if she could not afford to pay the full amount in one payment. Ms. Gordon was unable to make any contact with Ms. Turner after that telephone conversation.

Mr. Lee said it was his understanding that the Commission staff had spent approximately 17 hours attempting to contact Ms. Turner via emails, letters and telephone calls. He said this did not happen with most candidates. Ms. Gordon said this situation was rare and that most candidates promptly returned unspent MCEA funds and corrected their reports if they were told an expense was not permissible.

Mr. Marble asked if Ms. Gordon got a sense that Ms. Turner would be uncommunicative after their conversation on December 21. Ms. Gordon said her sense was that Ms. Turner understood she would have to repay these two expenditures and that there would be follow-up communications sent to her.

Mr. Schneider said the matter of the late-filing penalty was settled and there was no further action the Commission needed to take. With respect to the misspent MCEA funds, he asked Mr. Bolton if the Commission was only dealing with the potential civil fine under 21-A MRS § 1127. Mr. Bolton advised that if they believed the law was violated, the Commission should make a finding to that effect in a motion and include, in the motion, the specific expenses they found to be in violation of the statute. He said once the finding was made, the Commission could refer the case to the Attorney General's office for collection of the outstanding MCEA funds. He said the Commission could also impose a civil fine and make a referral to the Attorney General's office for collection of both the MCEA funds and the fine.

Mr. Hastings said the statute appeared to say the Commission could either assess a fine or make a referral to the Attorney General's office but not both. Mr. Schneider said the statute did continue to say that it could be enforced in accordance with § 1004-B. Mr. Bolton said § 1004-B did state that the Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the penalty. He said the prosecution mentioned in subsection 1 of § 1127 was a reference to subsection 2 of § 1127 which stated that a willful or knowing violation of the statute was a Class E crime. Mr. Lee said the statute allowed a fine not to exceed \$10,000 and, in addition to a fine, repayment of all amounts distributed to the candidate or any funds that were not used for campaign purposes.

Mr. Schneider said he strongly supported imposing a fine in this case because this intransigence and avoidance should not go unpunished.

Mr. Bolton informed the Commission that the procedure for collection changed if the civil violation was under \$1,000 pursuant to Rule 80H of the Maine Rules of Civil Procedure. That Rule established an expedited process for the collection of fines of \$1,000 or less. If the fine was over \$1,000, collection goes through the normal process of civil procedure.

Mr. Marble asked if the impermissible reimbursements and the late-filing penalty amounts should be combined when they consider what Ms. Turner owed. Mr. Lee said he did not believe they had to consider the amount of the late-filing penalty. Mr. Wayne said that was correct, the late-filing penalty would automatically be added to the total for the purposes of the \$1,000 threshold. Mr. Schneider said the total for the late-filing penalty and the return of MCEA funds was \$970.16. Mr. Lee asked Mr. Bolton if they assessed a \$500 penalty would the Attorney General's office combine everything together. Mr. Bolton said he believed they would group everything together for efficiency.

Mr. Hastings said he agreed with Mr. Schneider about imposing a fine. He said the lack of response was the exacerbating factor in this case.

Mr. Lee asked whether Ms. Turner's treasurer, who had texted Ms. Turner about contacting the Commission about the money owed, had confirmed that Ms. Turner had received her text. Ms. Gordon said that was correct. Mr. Lee asked if the treasurer had provided Ms. Turner's response to the text. Ms. Gordon said she had not. Mr. Lee said this was confirmation from a third party of Ms. Turner's receipt of notification about money being owed.

Mr. Lee asked whether there were prior cases in which a civil fine had been assessed for misspending MCEA funds. Mr. Wayne said there were, but in those cases the nature of the wrongdoing was more serious. He thought the penalties may have been in the \$500 range. He said this case was not as obviously wrong as those prior cases, but the Commission was not bound by those earlier cases.

Mr. Lee said the first step was to make a determination that MCEA funds were spent inappropriately and, if that motion passed, to proceed to the remedy (or remedies) they were seeking. The two possible remedies were to order the return of the misspent funds and to assess a civil penalty. Mr. Bolton suggested they be as specific as possible in the initial motion and detail the specific expenses they were finding in violation.

Mr. Lee made a motion to find that Ms. April Turner spent \$301.86 for the cost of internet at her home which was not authorized and was during the months of March, April, June, July, August, September, October and November of 2020 and further that she spent clean election funds in the amount of \$515.70 for a portion of her cell phone bill for the months of March through November of 2020 for a total of \$817.56.

Mr. Schneider suggested a friendly amendment to the motion to note that the internet and cell phone were in Ms. Turner's husband's name.

Mr. Lee amended his motion to find that the reimbursement by April Turner to her husband Craig Turner for internet costs in the amount of \$301.86 which involved the period of March through November of 2020 and the reimbursement by her to Craig Turner for \$515.70 for cell phone usage from the period of March through November of 2020 for a total of \$817.56 were improper reimbursements because these were normal household expenditures for which clean election money cannot be spent. Mr. Schneider seconded the motion. Motion passed 5-0.

In response to a question from Mr. Lee about whether Ms. Turner should have to pay back the misspent MCEA funds, all the Commissioners agreed she should.

Mr. Lee moved that, based on the foregoing decision of the Commission, April Turner reimburse the State of Maine \$817.56. Mr. Marble seconded the motion. Motion passed 5-0.

Mr. Lee asked if they wanted to impose a fine of up to \$10,000 as allowed under 21-A MRS § 1127. Mr. Schneider said he believed a \$300 fine was appropriate. Mr. Marble and Mr. Hastings agreed. Ms. Lowry said she was good with the \$300 fine but would also consider imposing a smaller fine in order to expedite the collection process. Mr. Lee said he supported the \$300 fine and would have supported a higher fine amount because this was a totally avoidable situation.

Mr. Lee made a motion to assess a civil penalty of \$300 against Ms. April Turner for failure to return the improperly spent clean election funds. Mr. Schneider seconded the motion. Motion passed 5-0.

Mr. Wayne expressed concern that the first motion did not contain language that it was a violation of the Maine Clean Election Act. Mr. Bolton said if there was any doubt about the motion, they could make another motion to note that the findings just made were a violation of the relevant provision.

Mr. Lee made a motion that the findings of violation made here today involved a violation of 21-A MRS § 1125(6). Mr. Schneider seconded the motion. Motion passed 5-0.

Other Business

Mr. Wayne said Stop the Corridor had provided the subpoenaed documents at the end of January. The Commission staff was in the process of reviewing those documents. He said they anticipated requesting additional documents and scheduling some interviews.

Mr. Wayne said the Commission staff had requested and received bank records for the Working Families PAC, which was former State Representative Diane Russell's leadership PAC. She had filed campaign finance reports through the summer of 2020 that indicated that the PAC did not have much financial activity. Mr. Dunn said no reports had been filed since the 42-Day Post-Primary Report, which was due on August 25, 2020. He said routine non-filing notices were being sent via email and regular mail. All the letters had been returned by the postal service, there had not been any response to the emails and Ms. Russell's voicemail was full. He said they were in the process of reviewing the financial records and would make a determination on next steps at the conclusion of that review.

Mr. Dunn said letters had been sent to the leadership PACs selected for review. All the PACs had returned the requested documents, and he was in the process of reviewing those documents. He anticipated sending follow-up requests for additional information in response to issues identified during the review process. He said they were on track to report back to the Commission at the April or May meeting.

Adjournment

Mr. Hastings made a motion, seconded by Mr. Schneider, to adjourn. The motion passed. The meeting adjourned at 11:34 a.m.

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