



Minutes of the January 27, 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; Phyllis Gardiner, Assistant Attorney General; Michael Dunn, Political Committee and Lobbyist Registrar; and Emma Burke, 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. Request for Waiver of Late-Filing Penalty – Hon. Troy Jackson

Mr. Wayne said Senator Jackson made a \$1,250 expenditure for newspaper advertising on October 26, which triggered the requirement to file a 24-Hour Report. Senator Jackson contacted the Commission staff for guidance on how to file this report and the Commission staff explained that he had to enter the expenditure into the eFiling system for the report to be generated. Senator Jackson entered the expenditure into the Commission's eFiling system and thought the process was done. However, his deputy treasurer did not actually file the 24-Hour Report until October 29, two days late. The preliminary penalty was \$50.

Mr. Lee said the Maine Clean Election Act (MCEA) laid out the two-part process for MCEA candidates to file campaign finance reports; the candidate could enter transactions in the system, but only the treasurer could file the report. Mr. Wayne said that was correct. Mr. Lee asked for confirmation that the purpose for this requirement was to have more than one person involved in the reporting process because public funds were involved. Mr. Wayne said that was correct; it provided another layer of accountability. Mr. Wayne said the Commission staff had some concerns about the 24-hour reporting process because it was the last 13 days before an election and a very busy time. He said they believed it would not be a problem if the law allowed MCEA candidates to file 24-Hour Reports. Mr. Lee asked if the requirement that treasurers had to file the report was communicated to candidates. Mr. Wayne said he was sure it was in the Commission's guidance and guidebook.

Mr. Schneider expressed concern about the email notifying candidates about the 24-hour reporting process and pointed out that in the email it states "you" can file the report. Mr. Wayne said he

believed this email was sent to all legislative candidates, regardless of funding status. He said it should probably be broken out a little better in the future. Mr. Lee said he shared Mr. Schneider's concern.

Senator Troy Jackson appeared before the Commission. Senator Jackson said he did not believe he had filed a 24-Hour Report in the past, but if he had it had not been in the recent past, and he did not believe he would have filed it late. He said when he realized he had to file a 24-Hour Report, he called and spoke with Paul Lavin, Assistant Director. Based on that conversation, he entered the expenditure and thought everything was fine. He said he agreed with Mr. Wayne that this was a very busy time and he had been busy meeting people and putting out signs. He said he had talked with his deputy treasurer about it but because of the confusion with the erroneous email, she did not realize there was a 24-Hour Report that had to be filed. Senator Jackson said he appreciated everything the Ethics Commission does but that was a very busy time for the campaign and there was some confusion about the emails and process.

Mr. Lee asked if the Commission staff had sent out a corrective email after the system sent out its erroneous email. Mr. Wayne confirmed that Commission staff had sent a corrective email.

Mr. Lee asked if Senator Jackson had previously filed any 24-Hour Reports. Senator Jackson said he may have filed a 24-Hour Report in his first Senate campaign in 2008 but, generally, he tried to avoid making expenditures that trigger that requirement. He said this year the vendor had raised their rates and he had not realized that when he made the expenditure. Mr. Lee asked what Senator Jackson thought he had to do to file this 24-Hour Report. Senator Jackson said he knew he had to file it, but he could not find the report or a link to the report, which is why he called the Commission staff. He said he thought that if he entered the expenditure that would file the report. When he became aware that the report had not been filed, he contacted his deputy treasurer. Mr. Lee asked Mr. Wayne if the requirement was that the treasurer must file all reports. Mr. Wayne said that was correct.

Emma Burke, Candidate Registrar, appeared before the Commission. She said the email was sent to both traditionally financed and MCEA candidates. She it was common practice for their emails to use "you must file," but the requirement for the treasurer or deputy treasurer to file all reports for MCEA candidates was referenced in guidance and communications sent by Commission staff. She said they would work to clarify that language in future communications.

Senator Jackson said he did not have any problems with the Commission staff or their guidance. After talking with Mr. Lavin, he thought he could file the report. He did not blame the staff; he had always found them to be very helpful.

Mr. Lee asked Senator Jackson how many times he had been an MCEA candidate. Senator Jackson said he had probably been an MCEA candidate seven or eight times. Mr. Lee said the requirement that only the treasurer could file reports had been in place in the last couple of elections. Senator Jackson agreed. Mr. Lee said Senator Jackson was not a first-time candidate and he could understand the confusion from the email, but the rule that the treasurer must file reports applied to all campaign reports. He said based on that, he had a hard time excusing the late filing in this instance.

Mr. Hastings said it was apparent Senator Jackson had acted in good faith and had done everything he thought he had to do. He said in his brief time on the Commission, they had drawn a fairly bright line about dealing with late filed reports and waiver requests. He said he did not see how they could differentiate between this case and past cases in order to grant a waiver in this case.

Mr. Marble said the reporting system was intended to protect the citizens and taxpayers of the state and that was why it had to be adhered to. He expressed empathy for Senator Jackson for running in a large district and said he recognized how busy he would have been at the end of the campaign.

Mr. Hastings made a motion to not waive the preliminary penalty of \$50. Mr. Marble seconded the motion. Motion passed 5-0.

Mr. Lee said that in passing this motion the Commission is not suggesting that Senator Jackson did not act diligently in trying to comply with the reporting requirements. It was abundantly clear that Senator Jackson was trying to comply with the reporting requirements.

2. Complaint: Reporting of Compensation in Citizen Initiative Campaign

Mr. Wayne said petitioning had been underway for several months for a second citizen initiative opposing the New England Clean Energy Connect (NECEC) project. Clean Energy Matters had filed a request for an investigation alleging that Sandra Howard, an officer of Say No to NECEC, had received compensation and/or been reimbursed for her work on the current citizen initiative that was not reported by the two political action committees (PACs) registered to support the initiative.

Mr. Wayne said the response from Ms. Howard and the two PACs was that Ms. Howard was serving as a volunteer. She had received a reimbursement from No CMP Corridor for a purchase at

Staples. Mr. Wayne said the Commission staff did not believe Clean Energy Matters had provided sufficient evidence to support its request for an investigation.

Ms. Lowry asked if Clean Energy Matters had provided any evidence. Mr. Wayne said they were primarily relying on social media postings that show Ms. Howard's involvement in the initiative.

Newell Augur, Esq., appeared before the Commission on behalf of Clean Energy Matters PAC. Mr. Augur said that, based on the amended filings by No CMP Corridor and Mainers for Local Power, he agreed with the Commission staff's recommendation and wanted to withdraw the request for investigation.

Mr. Lee said there would be some value to the public if the Commission took some action regarding the complaint. Otherwise, the public would not know whether there was any merit to the complaint or whether it was withdrawn purely on procedural grounds. Mr. Lee asked Ms. Gardiner if, procedurally, it would be better if they took a vote in order to dispose of the matter now that it had been put on the Commission's agenda. Ms. Gardiner said since the matter was before the Commission now, it would be entirely appropriate to take a vote on the request for an investigation if they wished.

Mr. Augur said the evidence in this case was the lack of evidence. He said he would have anticipated seeing some expenditures for someone who was the centerpiece of a \$2.5 million signature campaign that had run for three months. He said since filing the request for investigation, Revolution Field Strategies had submitted a filing with the Secretary of State's office that showed they had over 350 paid circulators on their list, so clearly the majority of the signature gathering activity was carried out by them and not the two PACs.

Mr. Lee said that Ms. Howard and Mr. Kilbreth ought to be heard and have their comments on the record.

Mr. Hastings asked for clarification on Mr. Augur's statement about amended filings because he was only aware of one correction to report a \$20 reimbursement to Ms. Howard. He said there was not massive amount of financial activity that had to be amended in the report. Mr. Augur said he believed there had been some changes that involved another individual. Mr. Hastings said he preferred to limit the discussion to the claims involving Ms. Howard.

James Kilbreth, Esq., appeared before the Commission on behalf of Sandra Howard, Say No to NECEC, No CMP Corridor PAC, and Mainers for Local Power. Mr. Kilbreth said Mr. Hastings

was correct; the reimbursement to Ms. Howard had been for \$18.95. He said the Commission should not investigate anything based on what Mr. Augur termed as “a lack of evidence.” He said there was no mystery about Ms. Howard; she had been an active volunteer opposing the corridor from the start. A complaint should be based on something more than a person’s mere involvement in a campaign; there should be some evidence to back up the complaint.

Sandra Howard, principal officer for No CMP Corridor, appeared before the Commission. Mr. Lee asked her how many hours per week she spent on this initiative. Ms. Howard said she volunteered about 20 hours per week. Ms. Lee asked what sort of volunteer work she did for No CMP Corridor. She said it was mainly volunteer engagement, sharing information about the initiative, and most recently, recruiting volunteers to collect signatures for the new referendum. Mr. Lee asked for confirmation that she had not received any compensation for the work she performed for No CMP Corridor. Ms. Howard said that was correct. Mr. Lee asked if she received compensation for her work with Say No to NECEC. Ms. Howard said she was the director for the non-profit and did not receive any compensation. Mr. Lee asked how many hours she worked for Say No to NECEC. She said she worked approximately 10 hours per week for the non-profit and a total of 30 hours per week for both organizations. She confirmed that she also worked full-time as a teacher. Mr. Lee asked why she did not seek compensation for this work given the amount of time she gave to each organization. Ms. Howard said she has a direct connection with the land and natural resources that would be impacted by the corridor. She has been a registered Maine Guide for 25 years and her family owns land in the area that the corridor would go through. This was what drove her to volunteer to protect that region of Maine.

Mr. Marble expressed a concern about the Commission getting involved in investigations based on allegations which seem to rely on appearance instead of evidence. He respectfully disagreed with Mr. Kilbreth’s comment that a lack of evidence should not result in a complaint being filed. A complaint could be filed, but the Commission voted on whether to initiate an investigation. Those were entirely different things. He respected Mr. Augur’s offer to withdraw the complaint and Ms. Howard’s sincerity. Ms. Lowry also thanked Mr. Augur for withdrawing his complaint.

Mr. Hastings agreed, but said he was troubled that Ms. Howard had been brought before them today to deny allegations for which there was no hint of evidence. He said he was disappointed that this was filed without any substance to support the allegations.

Mr. Schneider asked if the complaint had been withdrawn before the meeting date, would the issue have been presented at this meeting. Mr. Lee said he did not believe it would have. Ms. Gardiner said he was correct and that had happened in the past, even when the matter was placed on the Commission's agenda. If a party wished to withdraw a complaint before the meeting, the Chair and Mr. Wayne would confer, remove it from the agenda, and report to the Commission that the request for an investigation had been withdrawn. However, once the Commission had convened and the hearing on the matter had begun, it made sense to carry through with a decision.

Mr. Lee made a motion that there were insufficient grounds to conduct an investigation in the complaint that has been made against No CMP Corridor and Say No to NECEC. Mr. Schneider seconded the motion. Motion passed 5-0.

Mr. Kilbreth asked about Mainers for Local Power, which had also been named in the complaint. Ms. Lowry agreed and asked if they should amend the motion.

Mr. Lee made a motion to reconsider the motion that was just passed. Ms. Lowry seconded the motion. Motion passed 5-0.

Mr. Lee made a motion that there were insufficient grounds to initiate an investigation on the complaint filed by Clean Energy Matters against No CMP Corridor, Mainers for Local Power, and, to the extent it can be implied, any complaint against Ms. Sandra Howard. Ms. Lowry seconded the motion. Motion passed 5-0.

3. Request for Waiver of Late-Filing Penalty – Mainers for Health and Parental Rights

Mr. Wayne said this was a waiver request by Mainers for Health and Parental Rights PAC. The PAC made a \$1,000 contribution to another PAC in the last 13 days of an election and was required to file a 24-Hour Report. However, the PAC was not aware that it had to file a 24-Hour Report until it filed the 42-Day Post-General Report. In its request for a waiver, the PAC stated it was a relatively new PAC and had not been aware of the 24-hour filing period. The report was filed 29 days late and the preliminary penalty was \$980.

Mr. Lee asked if they had to make a decision on whether they could hear this case because the waiver request had not been timely filed within the 14 days after receiving the notice of preliminary penalty. Mr. Wayne said the preliminary penalty letter was mailed to the treasurer and emailed to Ms. Sacks and Ms. Kenney on December 16. The treasurer said he was out of state and did not see the letter until he returned on January 7; he filed the waiver request on January 13. Mr. Wayne said

that while the waiver was not timely filed, the Commission staff was generally flexible and lenient about the 14-day requirement. Mr. Lee asked if there were instances where Commission had waived the 14-day period. Mr. Wayne said the Commission staff had never brought this to the Commissioners' attention. He said he could not think of a time when the Commission had not considered a waiver request because it had been late filed.

Ms. Lowry said she did not think they should have to vote on whether to hear the waiver request. She said she trusted the staff's judgment and discretion in bringing these matters to the Commission. Mr. Lee said the difference was that the Commission staff had raised the issue. He believed they should vote on whether they could hear this matter because of the potential impact on future matters. He asked Ms. Gardiner how they could hear this matter despite it being past the statutory deadline for requesting a waiver. Ms. Gardiner said she could not recall a situation like this coming before the Commission because the staff had dealt with it at its level. She said there had probably been some waiver requests that the Commission had acted on without addressing the timeliness question, and thereby implicitly granted a waiver even if it was not a conscious decision. Mr. Lee asked if there was an unwritten good cause rationale for allowing a late-filed waiver request to be considered. Ms. Gardiner said there was not a standard written in law for the basis of what a waiver of the deadline could be. She thought there was implied authority to grant a waiver of the deadline under circumstances the Commission thought appropriate. She said she did not believe they had to read the statute so rigidly that they were unable to allow consideration of any waiver request filed after the deadline. She thought the person asking for the waiver did not have a right to have the Commission consider their request if they filed it late, but it would be a final determination if the Commission chose not to consider the waiver.

Mr. Wayne said because the Commission staff had not strictly adhered to the 14-day period, there was likely a track record of waivers that were filed late but presented to the Commission. He said there were a lot of circumstances that could result in a late-filed waiver and good reasons for accepting a waiver filed after the 14-day period. While consistency and deadlines were important, strict adherence to them could result in disproportionately large penalties because the preliminary penalties were based on the statutory formula.

Mr. Hastings said he considered this to be a procedural deadline rather than a substantive deadline. He thought it was within the Commission's discretion to waive the deadline, provided it did not cause any prejudice to any potential party to the proceeding.

Mr. Lee said they should hear from Ms. Sacks and Ms. Kenney about why they had filed late but he wanted to be thoughtful about this process because of the impact on future matters.

Ms. Lowry said if a late-filed request for waiver was brought to their attention, they should make a decision on it, but she would prefer to rely on the Commission staff's judgment because she did not believe it needed to be brought to their attention.

Mr. Hastings made a motion to accept the late-filed waiver request and consider it on its merits.

Mr. Lee seconded the motion. Motion passed 5-0.

Cara Sacks, campaign manager for Mainers for Health and Parental Rights PAC, appeared before the Commission. She said the PAC was created in the summer of 2019 and had been very involved in the referendum process. She and Ms. Kenney had handled all the campaign finance reporting and had been meticulous about the filings. She said they were not aware that a \$1,000 expenditure had to be reported within 24 hours and immediately contacted the Commission when they first became aware of the late 24-Hour Report at the time they filed the 42-Day Post-General Report. She said they accepted responsibility for the late filing but had asked for a waiver because of their inexperience and because this was their first violation.

David Boyer, a consultant working with the PAC, appeared before the Commission. He said this was their first violation and, while there was some harm to the public for the lack of disclosure, this was a contribution from one PAC to another.

Mr. Lee asked how much money the PAC had raised for this campaign. Mr. Boyer said it had raised \$300,000 for this signature drive that had occurred almost two years ago. He said that sounds like a lot of money, but signature drives cost a lot of money. He said this contribution made to the other PAC was made with funds remaining after the referendum campaign was over; there had not been any active fundraising.

Mr. Lee said, unless there were aggravating circumstances, the Commission used past precedent to determine the amount of waiver it granted. He said there did not appear to be any aggravating circumstances in this case, and they were considering the waiver despite it being filed late. Ms. Lowry agreed with Mr. Lee.

Mr. Schneider asked about the timing of the filing. Mr. Lee said the contribution was made before the election but reported after the election. Mr. Schneider said there was significant harm to the public because of the late filing and he believed a significant penalty was appropriate.

Mr. Lee made a motion to accept the staff recommendation to reduce the statutorily calculated penalty from \$980 to \$750. Mr. Marble seconded the motion. Motion passed 5-0.

4. Request for Waiver of Late-Filing Penalty – Scott N. Gaiason

Mr. Wayne said Scott Gaiason was an MCEA candidate running for House District 56. Mr. Gaiason was required to file the 11-Day Pre-General Report on October 23. Mr. Gaiason had to report a supplemental MCEA payment, which was entered by the Commission staff, and an expenditure to Frame Strategies. Mr. Wayne said there were three email reminders about the report due date sent automatically from the eFiling system and Emma Burke, Candidate Registrar, had personally sent him two emails on the day the report was due, in the afternoon and evening. The report was filed one day late, on October 24, and the preliminary penalty was \$109.54. In his waiver, Mr. Gaiason said he had entered the transaction on October 23, but his treasurer was unavailable to file the report and he lost track of time, which resulted in the report being filed one hour after the deadline. Mr. Wayne said there were no logins noted in the eFiling event log for October 23.

Scott Gaiason appeared before the Commission. He said it had been a difficult year, he had not done as much for the campaign as he normally would have, and he had not regularly checked his campaign email.

Mr. Lee asked if he had run for office before. Mr. Gaiason said this was his third campaign. Mr. Lee asked if it would be fair to say he was an experienced candidate. Mr. Gaiason said he was in a very grassroots sort of way. Mr. Lee said it was important for the campaign to check email frequently. Mr. Gaiason said he had in the past but not this time.

Mr. Lee made a motion to assess the statutorily calculated penalty of \$109.54. Mr. Hastings seconded the motion. Motion passed 5-0.

Adjournment

Ms. Lowry 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