



Minutes of the June 4, 2019 Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: William A. Lee III, Esq., Chair; Hon. Richard A. Nass; Bradford Pattershall, Esq., and Meri N. Lowry

Staff: Jonathan Wayne, Executive Director; Phyllis Gardiner, Counsel

Mr. Lee convened the meeting at 9:01 a.m.

1. Ratification of Minutes of April 24, 2019 Meeting

Mr. Pattershall said he would abstain from the discussion and vote on this item because he was not present at the April meeting.

Mr. Nass said the minutes should reflect more of the discussion regarding the proposed rule changes (Agenda Item #4). He said his opposition to the proposed rules was noted, but there was no record of his reason for objecting to the proposed rules. Mr. Wayne explained that there was a problem with the audio recording of the meeting and it could not be used to draft the minutes. Any omission was unintentional. Mr. Wayne said that the staff could revise the minutes using notes taken by Ms. Gardiner and others and present the revised minutes at the next meeting.

Mr. Nass said that he would like the minutes to reflect his concern about requiring legislators to report more information about travel reimbursements and gifts on their annual financial statements beyond what they were already required to report.

Mr. Lee made a motion to postpone adoption of the minutes of the April 24th meeting to the next meeting. Ms. Lowry seconded the motion.

Ms. Lowry suggested that the final two paragraphs of the minutes before the motion to adjourn be placed under the heading of "Other Business" to differentiate the subject matter from Agenda Item #5 regarding the auditor's update.

The motion passed (3-0-1, Mr. Pattershall abstained).

Mr. Nass asked for an update on legislation regarding the collection of \$5 qualifying contributions at voting sites. The discussion can be found under Other Business.

2. Update on Transition and Inaugural Committees

Mr. Wayne explained that the requirement for a governor-elect to form a transition or inaugural committee was a provision in the citizen initiative that passed in 2015. This is the first instance of the law being implemented by the Commission. After the November election, then Governor-elect Janet Mills established two committees – one relating to her transition to office and one to raise and spend money for her inauguration and the inaugural celebration. In compliance with the new law, the two committees registered with the Commission in early December and filed financial statements on January 2nd and February 15th. The inaugural committee voluntarily filed an additional statement on May 1st. Mr. Wayne noted that the committees are not regulated under campaign finance law in Title 21-A, but under the governmental ethics law in Title 1. Mr. Wayne said he viewed the new law as a transparency law to shed light on the governor-elect's financial activities in the period after the election and before the inauguration. The new law presumes the inaugural committee can quickly wind down its activities after the inauguration. The law requires the committee to stop receiving donations by the end of January and file a final statement on February 15th.

Mr. Wayne said that because of its work with candidates, the Commission staff is aware that vendors do not always send invoices promptly and that the final price charged for goods and services can be higher than the initial quote from the vendor. That is what happened to the Mills inaugural committee. At a meeting with the Commission staff on February 7th, Michael Carey stated the inaugural committee received an invoice from the Augusta Civic Center that was \$60,000 higher than what the inaugural committee expected. He also said that the committee's revenue would not be sufficient to pay the invoice. The staff and Mr. Carey discussed the options available to the committee. From the staff's perspective, it was not practical for the committee not to pay the Augusta Civic Center, which could result in a lawsuit against the committee. Mr. Wayne said he told Mr. Carey that, though he could not speak for the Commissioners, the staff's advice was for the committee to continue fundraising in order to pay the invoice.

Mr. Lee said the maximum penalty for a violation of the law was \$10,000 and there was no minimum penalty. Mr. Wayne agreed and said the law does not specify any factors for the Commission to consider in assessing a penalty. Mr. Lee said there are some provisions of campaign finance law that have a \$10,000 maximum penalty which also do not state any criteria for the Commission to use in evaluating what a penalty should be.

Ms. Lowry said she had two general comments. First, she commended the staff for the comprehensive materials provided to the Commissioners. This is a new issue for the Commission and she felt she was well-informed because of the materials provided. Second, she thanked the staff for including a link to the reports filed by the committees. Ms. Lowry said she found it more difficult to find the reports than she expected, as a member of the public, when she looked for them on the website.

Michael Carey, Esq., counsel for the inaugural and transition committees, addressed the Commission. In response to questions from Mr. Lee and Mr. Nass, Mr. Carey clarified that he is not a part of the Governor's administration; he is an attorney in private practice. He did serve as counsel to the campaign during the election. He stated he submitted a letter to the Commission to address the concerns raised during the last Commission meeting. The letter described in detail the circumstances that surround the outstanding invoice from the Augusta Civic Center. Mr. Carey stated he would like to underscore that the committee has operated in good faith and sought the advice of the staff immediately when questions arose. In keeping with the intent of the citizen initiative, the activities of and funding for the transition and inaugural committees were separate from each other. The transition committee operated without any funds from lobbyists or their employers. The transition committee has completed its work and has filed its last report.

In response to a question from Mr. Lee, Mr. Carey said the original quote, received in late November or early December, from the Augusta Civic Center for the cost of the inaugural ceremony and the post-inaugural celebration was for \$132,000. The event organizers proceeded with the amount of the quote in mind and were in communication with the Augusta Civic Center by email and in meetings in the lead-up to the events. The final invoice was for \$194,902, which was \$62,902 higher than the original quote. Mr. Carey said there were two reasons the invoice was higher than the quote. First, some of the items (*e.g.*, sandwiches, beverages, etc.) provided

by the Augusta Civic Center were different from those in the original quote and had a higher per item cost and/or the item count was higher than anticipated. Second, the most significant additional cost was a 20% food and beverage charge that was not included in the original quote. Mr. Carey said he understood the 20% charge to be akin to a gratuity, but it was not listed in the original quote.

Mr. Lee asked whether the committee has contested the inclusion of the 20% charge. Mr. Carey said there have been conversations and negotiations but no formal threat of legal action by either party.

Mr. Carey said the committee has paid \$75,000 to the Augusta Civic Center to date and the committee has \$53,000 on hand to make an additional payment. Mr. Carey said the committee had sufficient funds available at the end of January and would have been able to cover the obligation to the Augusta Civic Center but for the fact that the final invoice was higher than the original quote. Had that not been the case, the committee would have been able to file a final statement in February. While there has been little fundraising activity in the past several months, Mr. Carey said the committee will continue to raise funds to pay the invoice.

Mr. Pattershall asked why the committee did not pay more towards the final invoice with the funds it had on hand in January. Mr. Carey responded that the committee wanted to make a good faith payment to the Augusta Civic Center but held back a significant amount in light of the outstanding issues and negotiations surrounding the final invoice.

Mr. Nass noted that the statement filed on May 1st only reported about \$2,500 in contributions and asked Mr. Carey why the committee did not raise more funds over the past several months. Mr. Carey said the committee did not decide to halt or reduce its fundraising efforts. Rather, members of the committee were focused on other priorities as the transition to actual governing was underway. In addition, the responsibilities to wind down the 2018 gubernatorial campaign and the transition and inaugural committees was given to one person. Mr. Carey said it took longer than expected for that person to get all the necessary records to get up to speed.

Mr. Nass expressed his concern that the committee did not put sufficient effort into its fundraising, given that the principal officer of the committee is the Governor's chief of staff, one primary fundraiser was ill, and the other primary fundraiser was in Israel. Mr. Carey said that he

and Jeremy Kennedy, the principal officer of the committee, became aware that the one of the principal fundraisers was ill on January 25th. He said he immediately informed the Commission staff of the problem.

Mr. Lee stated this matter is not in the proper posture before the Commission for an enforcement action because no notice has been given. Nevertheless, he said it seems the Commission must make an initial decision as to how to proceed. The committee did not comply with a statutory deadline. Therefore, there is a reasonable expectation that the Commission will take some action regarding the violation. The Commission could decide the statute is unworkable and recommend changes to the Legislature but take no action against the committee; or could instruct the staff to conduct further investigation and report back for a potential enforcement action.

Mr. Nass said he had not reviewed the committee's reports but may have more questions after doing so. Whether in the context of an investigation or simply a delay before making a final decision, Mr. Nass said he would be interested in continuing the conversation about this matter.

Ms. Lowry said she was puzzled by the breadth of the discussion. The relevant issues were laid out in the materials given to the Commissioners. The committee was working on resolving issues regarding the balance owed and was doing so to the best of its ability. She said she was surprised specific lines of questions were being asked about the steps the committee took or did not take, or the accuracy of the reporting when the reports have not been reviewed or brought before the Commission. The matter before the Commission is whether the committee complied with a deadline. She said Mr. Wayne noted in his memo that even county candidates have greater flexibility in winding down their campaigns than is afforded to the Governor under this new law. As is often the case, the first time a new statute is applied in a real-world setting, the problems and deficiencies regarding requirements and deadlines will come to light, as is happening with this statute. Ms. Lowry would like the Commission to focus on whether the committee complied with the transparency requirements of the statute in a timely manner while having to deal with an unworkable deadline.

Mr. Pattershall asked whether there are any rules related to the statute. Mr. Wayne said there are not, but the Commission staff was providing staff guidance at the request of the committee.

Mr. Lee asked Mr. Carey how the Commission can ignore the law and the committee's violation of the statutory deadline. Mr. Carey said he did not think the Commission was ignoring the statute. The Commissioners are considering this matter seriously. The purpose of the statute is transparency and the committee has met those requirements. When it became clear that a requirement under the law could not be met, the committee alerted the Commission staff on the same day.

Responding to Mr. Pattershall, Mr. Carey said that the committee reported an expenditure to the Augusta Civic Center in the amount of the final invoice (\$194,902) but noted in the report that the full amount had not been paid. The committee did not intend to report the debt as a donation because he did not think that would be appropriate while there were outstanding issues regarding the invoice.

Mr. Lee cited subsection 9 of the statute that mandates the Commission to administer and enforce the law. While the Commission has a great deal of discretion, he found it difficult to ignore that requirement by taking no action regarding this matter.

Mr. Nass asked Ms. Gardiner what the Commission has for options regarding enforcement. Ms. Gardiner said the Commission has complete discretion whether to find a violation and whether to assess a penalty from \$1 to \$10,000 or no penalty at all. Unlike campaign finance law, there is no statutorily set penalty which the Commission may waive or reduce.

Ms. Lowry said the Commission's priority is to ensure disclosure and transparency. There has been no suggestion that the committee did not accurately disclose everything it was required to disclose in a timely manner, including a debt that could not realistically be considered a donation or satisfied within statutory timeline. She noted, however, that the committee had to continue fundraising after the January 31st deadline.

Mr. Lee said he was focused on the fundraising after a statutorily set deadline of January 31st. He said the deadline may be unrealistic but it is currently the law. Mr. Lee said he was concerned about setting a precedent that could affect the Commission's actions in the future.

Mr. Wayne said that when Mr. Carey notified the staff of the committee's unresolved debt in early February, the staff anticipated that the length of time needed to raise the funds to pay off the debt would be relatively short. The staff viewed the enforcement of this law differently than

enforcement of campaign finance law. This law applies to only one official and will not apply again for another 4 or 8 years. Campaign finance law applies to hundreds of candidates every two years and it is important that the law is enforced consistently. The staff hopes that changes to this law will make it more realistic and flexible by the time it applies to a new governor.

Mr. Wayne said if the Commission decided this matter was not ripe for an enforcement action, he did not think the Commission would be ignoring its responsibility to administer and enforce the law. Rather, the Commission would be using its equitable powers to take certain factors into consideration, such as the practicality of a deadline in a law being applied for the first time and the uniqueness of this situation. Mr. Lee said Mr. Wayne was suggesting that this would be analogous to prosecutorial discretion. Mr. Wayne agreed.

Mr. Nass said he would like the opportunity to review the reports because he questioned how so much money could be raised without getting donations from lobbyists and their clients, which is prohibited under the law. In response, Mr. Carey said the committees took great pains to ensure that no donations from lobbyists were accepted.

Ms. Gardiner pointed out that Title 21-A specifies the procedure for filing complaints with the Commission and for the Commission to decide whether to initiate an investigation of a violation of campaign finance law. The law regarding a governor-elect's transition/inaugural committee is in Title 1, and there is no comparable procedure specified in the statute or rules. The Commission could refer to the procedure in Title 21-A by analogy but, with respect to this matter, it is not operating within that construct – there is no complaint or staff-initiated request for an investigation before the Commission today. This matter is before the Commission as an informational session. There is nothing before the Commission that requires action today.

Mr. Carey requested that the Commission continue its consideration of this matter. He said it would be more appropriate to make a final decision after the issues regarding the debt to the Augusta Civic Center have been resolved in order to avoid any complications with the settlement negotiations.

Ms. Lowry said Mr. Carey's request highlights the impracticality of the deadlines in the statute and how it is incompatible with a real-world application. She said she does not believe the Commission has to take an action today or that the Commission will look bad if it takes no

action. This is an opportunity to find out how to address the flaws in the statute and to improve its effectiveness without changing its intent.

Mr. Lee said that if the Commission were to take no action today other than require an update at the next meeting, that should not be construed as permission to violate the statute regarding fundraising after the deadline. Mr. Carey said that was clear to him.

Mr. Lee made a motion to receive an update on the status of this matter by the next regularly scheduled meeting. Mr. Nass seconded. The motion passed (4-0).

3. Maine Clean Election Act Violation – Stephen C. Ball

Mr. Lee said that he would recuse himself from consideration of this matter. Mr. Lee left the Commission table and took a seat in the audience. Mr. Nass assumed the role of Chair for this matter.

Mr. Wayne said Stephen C. Ball participated in the Maine Clean Election Act (MCEA) program as a candidate for the Maine House of Representatives. He was selected for a random audit and the issue before the Commission came out of that audit. Mr. Ball purchased campaign signs from a print shop in Bangor, but the signs did not have the required disclaimer statement. Mr. Ball used \$393.96 of his own money to pay for decals to affix the required “paid for and authorized by” information on his signs. Mr. Ball viewed using his personal funds as a way to fix his mistake without burdening tax-payers. Mr. Ball thought it was more appropriate to use his personal funds. However, MCEA candidates are not permitted to spend personal funds for campaign expenditures. Mr. Wayne suggested that the Commission impose a \$100 penalty. In the staff memo, the staff suggested an option to waive collection of the penalty because Mr. Ball already returned \$115 of unspent MCEA funds to the Commission. He could have used those funds to partially pay the cost of the decals.

Mr. Nass asked Mr. Ball if he had MCEA funds to pay for the stickers at the time of the purchase, to which Mr. Ball stated he probably did. Mr. Ball believed at the time it was his own error for which the taxpayers should not pay. In addition, he did not spend his own money to get an added benefit to his campaign other than making sure his signs were in compliance with the law. Mr. Ball stated he would accept any decision by the Commission. He said his major concern was that his actions would not have a negative effect on the public perception the

MCEA program. Mr. Ball took a moment to share he was appreciative of all the support he has received from the Commission staff throughout his campaign.

Mr. Pattershall made a motion to impose a \$100 penalty and waive collection of the \$100 given that \$115.31 was already returned to the fund by Mr. Ball. Ms. Lowry seconded. The motion passed (3-0). Mr. Lee had recused himself from consideration of this matter.

Mr. Lee rejoined the meeting and assumed the Chair for the remainder of the meeting.

4. Update on Audits of 2018 Maine Clean Election Act Candidates

Jennifer Connors of Runyon Kersteen Ouellette (RKO) appeared before the Commission to provide an update on the progress of the post-election audits of 2018 Maine Clean Election Act candidates. Forty-six legislative and three gubernatorial candidates have been selected for audit. All were notified in January and given until February to submit materials requested by RKO for the audits. As of the date of the meeting, twenty-two final audit reports have been completed. In response to a question from Ms. Lowry, Ms. Connors said the majority of the exceptions in the audits are reporting errors. Ms. Connors said she expects the remainder will be done by the July 30th meeting.

Other Business

Mr. Nass requested an update regarding legislation prohibiting the collection of qualifying contributions at polling stations. Ms. Gardiner stated there were a couple of proposals in front of the Legislature. One bill was specifically targeted at that issue, but that bill is dead now. The bill submitted by the Secretary of State contained a section that rewrote the entire section of the law regarding the political activity at polling stations. The Veterans and Legal Affairs Committee voted to strip that portion out of the bill and carry it over to the next session because it needed more study and discussion. The Secretary of State will be working with stakeholders over the summer to get feedback on that section of the bill. A new bill will likely be submitted to the Legislature in the Second Regular Session before the next election.

Mr. Lee asked Mr. Wayne about the status of the notification to leadership PACs that Commission staff will be conducting audits of the PACs. Mr. Wayne said there has been some discussion about how and when to notify the PACs. One possibility is to send a letter after the

July Quarterly Report or to send the notification in early 2020. Mr. Lee suggested an advance notice in 2019 and a follow up in 2020. He also requested that the Commissioners receive a copy of the letter.

Mr. Nass moved to adjourn. Mr. Lee seconded. The motion passed (4-0).

The meeting adjourned at 11:09 a.m.

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