



Minutes of the May 28, 2025 Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: William Schneider, Esq., Chair; Dennis Marble (by Zoom); David Hastings, Esq. (by Zoom); and Sarah LeClaire, Esq.

Staff: Jonathan Wayne, Executive Director; and Jonathan R. Bolton, Assistant Attorney General
Commissioner Schneider convened the meeting at 9:00 a.m.

1. Ratification of the Minutes of the April 30, 2025 Meeting

Ms. LeClaire moved to ratify the April 30, 2025 minutes. Mr. Hastings seconded the motion. The motion passed 4-0.

2. Request for Investigation – School Construction Referenda in Cape Elizabeth

Mr. Wayne stated the Commission received a complaint from Robert Benoit and Mary Ann Lynch about two referenda on the town ballot in Cape Elizabeth regarding whether to borrow money for school construction. One of the referenda was on the ballot November 5, 2024 and the second was scheduled for June 10, 2025. Mr. Benoit and Ms. Lynch believe the superintendent and school department made more than \$5,000 in expenditures for the purpose of influencing both referenda and are asking for an investigation to consider whether they were required to register as a ballot question committee and file reports disclosing expenditures made to influence the referenda.

Mr. Wayne said School Superintendent Chris Record viewed the advertisements as something he was supposed to do given the mandate on a School Board Advisory Committee to engage members of the public and encourage them to provide input at public hearings and meetings with officials.

Mr. Wayne stated the contents of the ads consisted of community outreach materials prepared by the architectural firm of Harriman Associates. As part of its contract to provide services to the town, Harriman prepared graphics and written descriptions of the challenges faced by the school buildings and possible solutions. These materials were used in a variety of ways,

including advertisements in the *Cape Courier* newspaper. Dr. Record said there wasn't a separate line item in Harriman's invoices for these community outreach materials. In its memo to the Commission, staff conveyed a preliminary estimate that design services by Harriman may have a value of around \$300 per ad, which the complainants dispute. The *Cape Courier* newspaper charged \$948 or \$1,015 to publish each ad. Mr. Wayne said there was a disagreement about whether the advertisements were intended to influence the vote or educate residents. Consequently, there was a disagreement about how many advertisements (if any) should count toward the \$5,000 spending threshold to qualify as a ballot question committee.

Mr. Wayne noted in a May 1, 2025 email that Mr. Benoit argued that the school department's expenditures to promote the November 2024 and June 2025 elections should be viewed as one continuous campaign that exceeded the \$5,000 spending threshold. Mr. Wayne recommended considering the two elections to be separate campaigns with separate \$5,000 spending thresholds.

Mr. Wayne summarized the complaint and the response by the school department. In 2024, the school department purchased six advertisements which the complainants viewed as for the purpose of influencing the election, for a total paid to the newspaper of approximately \$6,000 if all six were considered to influence the election. In 2025, five advertisements in the *Cape Courier* cost approximately \$5,080 if all five were considered to influence the election. Mr. Wayne summarized the school department's response, in which the superintendent said the school department's purpose in purchasing the 11 advertisements was to encourage the public to participate in public forums, school tours, meetings and hearings, to communicate with the School Building Advisory Committee (SBAC) and town officials. Mr. Wayne expressed the staff view that the advertisements barely mentioned the referenda and did not tell anyone how to vote. They provided information that the SBAC would deem necessary for the public to understand the issues.

Mr. Wayne explained he had not asked Mr. Bolton, the Commission's counsel, whether the Commission had the authority to regulate municipalities as ballot question committees. Mr. Bolton explained that the ballot question committee definition relies on a defined term, "person." The definition of person doesn't specifically include municipalities. Instead, it lists broad types of entities. Similar issues had come before the Commission twice before. The Commissioners were split in both cases on whether the government entity was a person. One case was regarding

expenditures by a state agency. The case law discussing whether state agencies are a person has drawn a distinction between municipalities and state agencies. There is a strong presumption that the Legislature does not intend state agencies to be considered a person. The law is murkier regarding municipal corporations. Mr. Bolton discussed a Law Court case from the 1930s, which considered whether a wrongful death statute that used the term “person” covered a municipality. Mr. Bolton said there was some ambiguity and if this were to go to court, the court would probably defer to what the Commission thought was the correct definition of the statute. In his opinion, a municipality is not a person under the Commission’s statutes, but it could be read either way.

Mr. Schneider referred to the other case, in which the Commission found the City of South Portland would have been required to file as a ballot question committee with the Commission if it had exceeded the \$5,000 spending threshold, which it had not.

Mr. Marble asked, absent a change in law or rule, how should the current Commission view a Commission decision from 2009 or any previous year. Mr. Bolton explained if the Commission thought the 2009 decision was wrong, it is within the Commission’s discretion to change the interpretation. The main value of following precedent is providing certainty about the law and what will be expected of people.

Mr. Hastings inquired about the 2009 decision. Mr. Wayne said in November 2009 there were two statewide initiatives that would reduce revenue to municipalities. The City of South Portland included a flyer in a mailing of property tax bills expressing the city council’s view on the referenda including what the impact would be on the city. Advocates for the statewide initiatives filed a complaint with the Commission alleging the city’s expenses for the flyer should be viewed as expenditures to defeat the two statewide initiatives and the city should be considered a ballot question committee requiring the city to register and file reports with the Commission. The city said it was not trying to influence the election, and the costs of the flyer were minimal. One of the arguments of the complainants was that one of the categories in the definition of a “person” in campaign finance law is a corporation, which should include a “municipal corporation.” During deliberations, two of the four Commissioners thought that a municipality could be a person, one thought a municipality could be an organization. Three Commissioners voted in favor of the proposition that a municipality could be a person in campaign finance law; the fourth disagreed with that. In this 2009 case, the costs of the

expenditure were less than the \$5,000 spending threshold to register and file reports, so the Commission didn't find the city in violation.

Mr. Marble said the 2009 case was a town weighing in on an initiative developed elsewhere, i.e. a statewide referendum, while the Cape Elizabeth matter is a ballot question developed by a municipality on its own initiative. Mr. Hastings agreed and said the current matter was a school board sending out information regarding a project of its own creation, not advocating for or against a third-party referendum. He said it was pointed out the committee had an obligation to educate the public regarding the proposal and the line between education and advocacy can get pretty vague.

Ms. Mary Ann Lynch, one of the two Cape Elizabeth residents who filed the complaint, explained they were not trying to silence the school. They recognized the school had an obligation to educate the voters, but there is a very fine line between education and advocacy. They were seeking the same level of transparency, accountability, and disclosure on government political advertising that is placed on the ads of private citizens involved in the same election. She requested a continuance for an opportunity to provide additional materials since they received the staff's comments and response from Superintendent Record late in the week prior to the meeting. She stated every ad the school board sent out had a QR code and she wanted to make sure the Commission had an opportunity to view where it sent people. Another ad came out the week before the meeting that was not included in the original complaint. Dr. Record said he was opposed to a continuance, and he would be unable to attend a June meeting.

Mr. Schneider moved to deny the continuance. He said he thought the Commission had enough materials to decide on the complaint. The motion was seconded by Mr. Marble.

Ms. Lynch said she wanted to provide the Commission with ongoing invoices. She found the estimates provided by the school board to be low and wanted to provide the Commission with more accurate information. She was surprised the staff walked back the 2009 South Portland precedent, as the complainants thought it was something they could rely on for this case.

Ms. LeClaire asked why the Commission should rush its decision, since this was an important issue. She thought it should be fully considered. Mr. Schneider said he didn't feel rushed but felt they had enough information to decide.

Mr. Hastings said he did not agree with a continuance. He thought the Commission needed to deal with the facts that existed at the time of the complaint. The Commission agreed that the date of the meeting should be the cut-off for submission of evidence.

Ms. LeClaire stated she thought the legal intricacies being discussed warranted more information from Mr. Bolton. Mr. Hastings agreed. Mr. Bolton indicated he could provide a memo about the legal matters for the Commission's review.

Mr. Schneider modified his motion to take testimony at the May 28 meeting which would close the evidence and defer a decision on the complaint until the Commission had a chance to analyze the law further. Mr. Hastings seconded the motion. The motion passed 4-0.

Ms. Lynch said she would like the opportunity to brief this issue, especially since the Commission would be receiving written legal advice from their attorney. The Commissioners agreed to accept briefs on the legal issue, but the evidence would be complete after today's testimony.

Mr. Robert "Larry" Benoit, the other Cape Elizabeth resident who filed the complaint, said these are public, taxpayer funds used by the school department for the purpose of influencing the elections. As a lay person, he believed he could trust the precedent established by the Commission in 2009. In filing the complaint, they were looking for transparency, accountability and compliance, nothing punitive. He thinks public officials have a special fiduciary obligation to properly spend public funds and provide transparency in how they are utilized. He said he served on the School Building Advisory Committee (SBAC), which was tasked with hiring an architect and an owner's representative to look at the school needs and options to address them. Harriman was hired as an architect, and Turner & Townsend Heery, LLC was hired as the owner's project management team. The SBAC was initially presented with seven options to consider, one of which was made to the school board.

Mr. Benoit said he served on the finance and communications committees that discussed the funds they were authorized to use for public notices. There was an enormous distinction between those ads and the ones that followed, which were intended and designed to influence the referendum. The school board rejected the recommendation of the SBAC. When the SBAC was terminated, the remaining funds for public notices were turned over to the school department, which used them to create and run ads after the city council put the question on the November 2024 ballot. Initially, Michael McGovern, the town manager, suspended further expenditures

until he had reviewed the status of the funds. In August, he emailed Dr. Record stating he could use the funds for ads, but he recommended the superintendent contact the Ethics Commission regarding how state law applied to them. He also wrote a letter advising the town council to have the school board register as a ballot question committee and start filing campaign finance reports.

Mr. Benoit said he is part of a citizens group that approves of making a significant investment in the Cape Elizabeth schools, just not the option selected. Mr. Benoit stated he has an extensive background in running political campaigns and feels strongly the school department has understated the amount of its expenditures. He believes the school department did not have authority to spend public funds on the ads. He referred to a court decision involving the Maine Turnpike Authority concluding that no public agency could spend public funds to influence elections without explicit legislative authorization. He said the Cape Elizabeth city charter does not authorize spending funds to influence elections. Mr. Schneider responded the Commission did not have any jurisdiction regarding how the town spends its funds.

School Superintendent Chris Record addressed the Commission and highlighted the public communication role of his position under state law and school board policy. He said it is his public duty on behalf of the board to communicate with members of the public and keep them well-informed. A school building project is a serious matter of public importance. The public must be well-informed of the need, the potential architectural solution, and the tax implications. They have made a substantial effort to engage the public in this process. The loss of the 2022 referendum for school improvements made clear there was not enough communication with the public. Therefore, part of the charge given to the SBAC was to conduct public outreach through multiple channels to inform, engage, and interact with the citizens of Cape Elizabeth. It was determined the *Cape Courier* was a very important method of communicating with the residents, especially those without children in the schools. The November 2024 referendum lost by 166 votes. The school board moved forward with a modified project that is on the June 10th ballot, making public outreach of even greater importance. Registering as a ballot question committee never crossed his mind. He had never heard of any school district needing to register. The ads had a clear disclosure to show who paid for them and financials were shared monthly at school board meetings. Harriman Associates is the preeminent firm in the state for building Maine schools, and they never mentioned any need to register with the Commission.

Ms. LeClaire stated one of the important purposes of the disclosure requirements is making sure the public knows about expenditures. She asked who shares financials and how detailed are they? Would they identify the informational materials being discussed?

Ms. Marcia Weeks, the school finance director, explained every week their warrants are reviewed by the school board, and signed. They are also reviewed by the town manager. They are then posted online monthly in a financial report. The expenses are organized by account code and broken down by vendor. If a citizen would like more detailed information, her office will provide it.

Ms. LeClaire asked if the witnesses recalled any town council or school board meeting when the specific decision to spend money on the ads was discussed. Dr. Record said it was discussed regularly at meetings of the Community Outreach Subcommittee. He also shared updates at monthly school board meetings.

Ms. Cynthia Boltz, vice chair of the school board, co-chair of the SBAC, and a member of the Community Outreach Subcommittee, stated the school board authorized the superintendent to continue to work with Harriman to support their public outreach educational efforts which included ads, flyers, forums, handouts, and graphics on their website.

Mr. Schneider moved to take no further action on the complaint. He said he analyzed the ads closely. Although some came close, he could not find they consisted of advocacy. He said the superintendent and school board had a duty enshrined in law to present information to the public. The ads presented a valid, non-advocacy type of information to the community. Therefore, he did not need to reach the issue of whether a municipality can be a person under law. Ms. LeClaire seconded the motion.

Mr. Hastings said he believed the question of whether municipalities were covered by campaign finance disclosure law was an important one moving forward. He saw an element of advocacy in the ads, which would be expected when the organization proposing the project is responsible for informing the public. He found the real issue was whether governmental entities should be required to register, even to advocate for their own governmental projects. He said that is the threshold question. He would like Mr. Bolton's legal analysis before voting whether to take action on the complaint.

Mr. Schneider said the Commission has a couple of options. The Commission could vote right now whether to take action on the complaint or – if the Commission preferred more legal

analysis – defer the vote, which is what the Commission decided earlier. Mr. Hastings said he would like the legal analysis. Mr. Schneider said the Commission would defer the vote.

Mr. Schneider acknowledged there was a motion on the table and said the Commission had an obligation to discuss it in public. He asked if there was any further discussion by the Commissioners.

Mr. Marble said he was not opposed to more legal analysis. He said he has significant problems with the idea of the Commission applying the direction, guidance and limitations for PACs or ballot question committees on publicly elected organizations like town councils and school boards. The purposes and goals are different in each case. There are avenues in law and custom for the disclosure of financial information concerning town councils and school boards that do not apply for private political activism. A greater portion of the public knows who is on their town council and school board and what they feel than would know with a ballot question committee or a PAC, except for the Commission's procedures where that has to be disclosed. Mr. Marble said he didn't think the applicability of the function of a ballot question committee or a PAC is appropriate for either a town council or school board. And that is why he will be voting to take no further action.

Mr. Schneider asked if there was further discussion among the Commissioners. He said that, seeing none, the Commission voted earlier to defer the vote and to ask Mr. Bolton to brief the issue in a more fulsome manner. He thanked the parties for coming and presenting evidence which helps guide the Commission in evaluating the issues. He acknowledged that this case has brought up some long-lasting issues. He said he was closing the evidence and the discussion for the time being.

3. Report on Campaign Finance Constitutional Amendments

On November 7, 2023, Maine voters approved a citizen initiative which directed the Commission to issue an annual report on proposals in the U.S. Congress to amend the federal constitution to allow for greater regulation of how money is raised and spent to influence elections. The Commission issued a report in 2024, and the upcoming report is due at the end of July 2025.

Mr. Wayne explained staff would check on any constitutional amendments that have been proposed in Congress since the 2024 report and invite comments from the public, which would be attached to the report.

Adjournment

Mr. Hastings made a motion to adjourn. Ms. LeClaire seconded. The motion passed 4-0. The meeting adjourned at 11:05 a.m.

Respectfully submitted,

Jonathan Wayne, Executive Director