



Minutes of the October 30, 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; and Bradford Pattershall, Esq.,  
Staff: Jonathan Wayne, Executive Director; Phyllis Gardiner, Counsel

Mr. Lee convened the meeting at 9:02 a.m. He said three of the four Commissioners currently serving were present. The fifth seat is vacant as it has been for the past 19 months. He said that Ms. Lowry was not present because she recused herself from participating in the primary matter before the Commission. Mr. Lee said Ms. Lowry's reason for her recusal was that she had made a contribution to Speaker Sara Gideon's U.S. Senate campaign and she did not want her participation to raise questions about her impartiality or the Commission's decision.

**1. Ratification of Minutes of September 25, 2019 Meetings**

Mr. Nass made a motion to adopt the September 25<sup>th</sup> minutes. Mr. Pattershall seconded the motion. The motion passed (3-0).

**2. Request to Investigate 2015-2016 Contributions by Gideon Leadership PAC**

Mr. Wayne said the request for investigation was made by Mr. Edward Youngblood who is a former State Senator and former Commission member. Mr. Youngblood alleged that six contributions made in 2015 and 2016 by Speaker Gideon violated the prohibition against making a contribution in the name of another in campaign finance law. Speaker Gideon made six contributions to four entities (two Maine-based political action committees and a federal candidate and political committee) using her personal funds. Her leadership political action committee, the Gideon Leadership PAC (the "PAC") later reimbursed Speaker Gideon for these contributions. In his request, Mr. Youngblood alleged the PAC made these contributions in the name of another, Sara Gideon. He has also filed a complaint with the Federal Election Commission. Mr. Lee clarified that the Commission does not have jurisdiction over the allegation of federal violations. Mr. Wayne agreed and stated the staff recommended that if an

investigation is authorized, it is limited to the two contributions to the state political action committees only and does not include the four federal contributions.

Mr. Wayne said Benjamin Grant, Speaker Gideon's attorney, provided some additional information regarding the contributions and reimbursements. The records provided by Mr. Grant show that on June 25, 2016, Speaker Gideon used her personal American Express card to make a \$250 contribution to the House Democratic Campaign Committee and a \$250 contribution to the Golden Leadership Fund. Speaker Gideon made the contributions online through ActBlue.com. The PAC reimbursed Speaker Gideon five days later, on June 30, 2016. The amount of the reimbursement was \$1,446.48 for the two contributions as well as other expenses Speaker Gideon had incurred on behalf of the PAC.

Mr. Wayne said the PAC's campaign finance report clearly indicates the PAC made the contributions to the two state political action committees in its own name and reimbursed Speaker Gideon for making the payments on its behalf. Based on the PAC's own reporting, he said the staff found it difficult to conclude that the PAC made contributions in the name of another. In addition, the staff considered the degree of public harm resulting from how the contributions were reported to be minimal. Anyone looking at the reports of the three Maine political action committees would see that the contributions were made by the Gideon Leadership PAC. Mr. Wayne said the fact that these events happened three years ago was also a factor in the staff's recommendation. For those reasons, Mr. Wayne said the Commission staff recommended that the Commission not initiate an investigation.

Mr. Lee asked Mr. Wayne to address Mr. Youngblood's other allegations regarding legislative ethics. Mr. Wayne explained the Commission has a limited role in investigating violations of legislative ethics. The legislative ethics law authorizes the Commission to investigate conflicts of interest, undue influence by a state legislator on a state agency, abuse of office or position, certain contracting violations, and accepting contributions from a lobbyist or lobbyist's client during the legislative session. The Commission does not have the authority to investigate alleged violations of the Legislative Code of Ethics as adopted by the Maine State Legislature. In addition, the legislative ethics law limits investigations to events that occurred within two years of the filing of a complaint. The staff recommended that the Commission not initiate an investigation of any violation of legislative ethics in this matter.

Mr. Lee said the Commission would begin by considering the request for an investigation regarding violations of legislative ethics and then consider the request for an investigation regarding violations of campaign finance violations.

Edward Youngblood, of Brewer, addressed the Commission. He described his background as a Legislator and a member of the Commission as well as his long and ongoing involvement with efforts to reduce the negative impact of dark money in political campaigns. He said Speaker Gideon should have known that her PAC could not make a contribution in the name of another but that is precisely what she did. Mr. Youngblood said he had nothing to add to his written request regarding the allegations of violations of legislative ethics.

Benjamin Grant, counsel for Speaker Gideon and the Gideon Leadership PAC, addressed the Commission. Mr. Grant said the complainant had not presented any rationale for the Commission to consider whether there was a violation of legislative ethics law. As the Commission and staff and counsel have noted the events that are the subject of the complaint occurred outside the two-year period under the statute. Mr. Grant urged the Commission to adopt the staff recommendation and not initiate an investigation.

In response to a comment by Mr. Lee regarding the standard for initiating an investigation under the legislative ethics law, Ms. Gardiner said the Commission would need to decide if this was an appropriate complaint under 1 M.R.S. § 1013. The Commission would be making a decision as to whether the Commission had the jurisdiction to consider this as a legislative ethics complaint.

Mr. Pattershall said the statute of limitations is clear and the Commission would be barred from considering this complaint. He said it is not necessary to discuss the merits of the complaint.

Mr. Lee and Mr. Nass agreed.

Mr. Lee made a motion that the Commission not request an investigation to be conducted regarding the complaint involving a violation of legislative ethics because the complaint is barred by the statute of limitations and the scope of the complaint does not fit within the permissible grounds for an investigation in 1 M.R.S. §§ 1001 & 1015.

Mr. Pattershall said he would prefer to limit the motion to be based only on the statute of limitation without making any finding that the complaint does not come under the purview of sections 1014 and 1015. He offered an amendment to that effect. There were no objections.

Mr. Lee restated the amended motion that the Commission not request an investigation to be conducted regarding the complaint involving a violation of legislative ethics because the complaint is barred by the statute of limitations. Mr. Pattershall seconded. The amended motion passed (3-0).

Mr. Lee opened the discussion of the second part of Mr. Youngblood's complaint regarding the potential violation of 21-A M.R.S. § 1004-A(3) and invited Mr. Youngblood back to address the Commission.

Mr. Youngblood said Speaker Gideon has been in the Legislature for nearly eight years. He said people involved in political campaigns know that it is illegal to make a contribution in the name of another. However, he said, Speaker Gideon stated she received poor guidance that it was permissible to give a contribution in the name of another. He said the Commission needed to investigate whether and from whom Speaker Gideon received the guidance she relied on. It is important for the Commission to ensure that campaign finance law applies equally and fairly across the board.

Mr. Lee said the memo from the Commission staff stated the purpose of the statute is to prevent people from funneling money to political campaigns secretly. In this case, there was no third person involved in making the contributions. Speaker Gideon made the contributions to the House Democratic Campaign Committee and the Golden Leadership Fund and reimbursed herself from her PAC. This contribution pattern was not necessarily what the statute is aiming to prohibit. This situation did not involve a scheme by one person giving money to others for the purpose of making contributions in their names in order to circumvent the contribution limits, which is the practice the statute is primarily aimed at preventing. In this case, anyone who looked at the campaign finance reports would see Speaker Gideon acting in two capacities – as an individual using her own funds to pay for the contribution and as her PAC making a reimbursement for the payment.

Mr. Grant addressed the Commission on behalf of Speaker Gideon and her PAC. He asserted the Commission does not have jurisdiction over the allegations of federal campaign finance violations and urged the Commission to take no action regarding them. Mr. Grant reiterated that the purpose of the statute was to prevent the circumvention of contribution limits. In this matter,

the two contributions at issue were to PACs and there are no limits on contributions to PACs. Another significant factor to consider is that these contributions were publicly reported by the Gideon Leadership PAC and there was no attempt to conceal who made the contributions.

Mr. Pattershall asked Mr. Grant whether he thought there was an issue for the Golden Leadership Fund in accepting and reporting a contribution from Sara Gideon when in fact the contribution came from the Gideon Leadership PAC. Mr. Grant said he could not definitely answer that, but he pointed out that at the time this became an issue, the Golden Leadership Fund had terminated and could not amend its report as the House Democratic Campaign Committee, which is an on-going committee, had.

Mr. Grant said he believed the Commission had all the relevant facts and documents before it and further investigation would not uncover any new information. He said the matter is ripe for a decision on whether there was a violation.

Mr. Pattershall asked whether the Commission could find new information about whether there was an intent to mislead. Mr. Grant said the corrective actions taken by Speaker Gideon and the initial reporting by the PAC show there was no intent to mislead. In response to a question from Mr. Pattershall, Mr. Grant said due to the amount of time that has passed, Speaker Gideon did not have a more detailed recollection regarding these transactions.

Mr. Nass said whether there was an intent to mislead or any mitigating circumstances may be relevant considerations at the penalty phase. However, in deciding if there is a violation, the law is clear – you cannot make a contribution in the name of another and that is exactly what Speaker Gideon did.

Ms. Gardiner asked Mr. Grant whether Speaker Gideon expected to be reimbursed by the PAC for the contributions she paid for with her personal credit card. Mr. Grant said that Speaker Gideon does not have a detailed recollection of the events that occurred three years ago.

Mr. Pattershall said this is probably not an instance of criminal wrongdoing and he does not see that there was an intent to deceive. However, the statute states a penalty may be assessed regardless of intent as Mr. Nass has pointed out. Nonetheless, he agreed with Mr. Grant that this was a minor matter and there were relevant mitigating circumstances to consider when assessing

a penalty. He said he was inclined to find that a violation occurred, and a very modest penalty may be warranted.

Mr. Lee said there are three possible actions the Commission could take: On the one hand, the Commission could vote on whether to initiate an investigation, in which case that would be there no other action for the Commission to take until the investigation concluded. On the other hand, if Mr. Grant and his client agreed, the Commission could move forward to determine whether there was a violation and whether a penalty should be assessed.

Mr. Lee called for a five-minute break in order that Mr. Grant and his co-counsel could consider how they wished to proceed.

The Commission reconvened. Mr. Grant said his client was prepared to move forward with the determination and penalty phase with the understanding that this would be the final disposition of the matter. Mr. Lee confirmed that if the Commission made a determination at this meeting, it would take no further action on the complaint.

Mr. Lee invited Mr. Grant to make a closing statement. Mr. Grant said the purpose of the statute is to prevent deception in campaign finance. The documentary evidence showed there was no intent to deceive with respect to any contributions at issue. To the extent the PAC made any reporting errors, they were corrected and the reports amended. The contributions were made about three years ago and the amount of the contributions – \$500 – was minor compared to the overall amounts raised and spent by the PACs. For those reasons Mr. Grant urged the Commission not to find a violation occurred. Mr. Grant recommended if the Commission should fine the PAC or Speaker Gideon, he urged the Commission to assess only a small percentage (10% - 20%) of the overall contribution of \$500.

In his closing remarks, Mr. Youngblood agreed no further investigation was necessary. However, he said the Commission should impose a strong penalty to demonstrate that the Commission pays attention to these violations of campaign finance law. He did not recommend any penalty amount.

Mr. Grant declined the opportunity to rebut Mr. Youngblood's closing statement.

Mr. Nass made a motion to find that Sara Gideon and the Gideon Leadership PAC violated 21-A M.R.S. § 1004-A(3) by making a contribution in the name of another. Mr. Lee seconded the motion.

The Commission discussed whether Speaker Gideon or the PAC or both should be found in violation. Mr. Pattershall stated it ultimately was the PAC that made the contribution in the name of Speaker Gideon, who was named as the contributor in the reports of the House Democratic Campaign Committee and the Golden Leadership Fund.

Mr. Lee made a friendly amendment to the motion, without objection, to find that the Gideon Leadership PAC violated 21-A M.R.S. § 1004-A(3) by making a contribution in the name of another, Sara Gideon. Mr. Pattershall seconded the amended motion. The amended motion passed (3-0).

Mr. Lee said that there were a number of mitigating factors when it came to the assessment of a penalty. There was no intent to deceive on the part of Speaker Gideon or her PAC. As has been pointed out, the purpose of the statute is to prevent deceptive conduct and the circumvention of the contribution limits. In this matter, there were no contribution limits. Any errors in the PAC's reports have been corrected. The amount of the contributions at issue was small compared to the overall financial activity of the PAC. There was no doubt that Speaker Gideon or her PAC was the source of the contributions and no other third party funneled funds to either Speaker Gideon or the PAC.

Mr. Pattershall, referring to the penalty standard in 21-A M.R.S. § 1004-A, stated there was no intent to mislead, and very minimal or no harm to the public. However, he did see a benefit in assessing a penalty as a deterrent to similar conduct. Mr. Nass agreed.

Mr. Lee said, as others have noted, it is not so much the amount of the penalty that matters as much as the message it conveys to other participants in the political process that there are consequences for not following the rules. He said a \$500 penalty, which would be 10% of the statutory maximum penalty, is consistent with similar violations and he saw no benefit in making the penalty greater.

Mr. Nass made a motion to assess a \$500 penalty. Mr. Pattershall seconded the motion. The motion passed (3-0).

**Other Business:**

The Commission directed Mr. Wayne to inform the Mills inaugural committee in writing that the Commission will decide whether to find a violation and assess a penalty at the December 18, 2019 meeting.

Mr. Wayne provided an overview of preliminary fact-finding the staff would conduct regarding the two complaints referred to the Commission by the City Clerk of Portland regarding the Portland mayoral election.

Mr. Nass moved to adjourn. Mr. Pattershall seconded. The motion passed (3-0).

The meeting adjourned at 10:58 a.m.

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