



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

Minutes of the January 30, 2017, Meeting of the  
Commission on Governmental Ethics and Election Practices  
45 Memorial Circle, Augusta, Maine

Present: Margaret E. Matheson, Esq., Chair; Meri N. Lowry, Esq.; Hon. Richard A. Nass; Bradford A. Pattershall, Esq.; and William A. Lee III, Esq., who participated via telephone.

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

Commissioner Matheson convened the meeting at 9:00 a.m.

The Commission considered the following items:

**1. Ratification of Minutes of December 8, 2016 and January 9, 2017 Meetings**

Mr. Nass made a motion to adopt the December 8, 2016 minutes as written. Ms. Lowry seconded the motion. Motion passed (5-0).

Mr. Nass made a motion to adopt the January 9, 2017 minutes, as modified. Ms. Lowry seconded the motion.

Motion passed (5-0).

**2. Request for Waiver of Late-Filing Penalty – Senate Chairmans PAC**

Mr. Wayne said the Senate Chairmans PAC (the “PAC”) received two contributions, \$8,500 and \$7,600, from the Maine Senate Republican Majority PAC (“MSRM”). The PAC reported the \$8,500 contribution in a 24-Hour Report but failed to report the \$7,600 contribution; MSRM reported both expenditures. The PAC’s treasurer discovered this error when filing the PAC’s 42-Day Post-General Report and filed the 24-Hour Report for the \$7,600 contribution 45 days late.

Joshua Tardy, Esq., counsel for the PAC, appeared before the Commission. Mr. Tardy said the end of a campaign cycle is a very busy time and this was simply an oversight by the treasurer. He said he appreciated the staff recommendation but he believed the recommended reduction to \$500 penalty was still too high. Ms. Matheson said she believed the recommended reduction was in line with their past findings. She said she did believe there was limited harm to the public because MSRM had reported the transactions.

Ms. Matheson made a motion to reduce the statutorily calculated penalty of \$6,480.00 to \$500.00 as recommended by Commission staff. Ms. Lowry seconded the motion. Motion passed (5-0).

### **3. Request for Waiver of Late-Filing Penalty – Empowering Maine Leadership PAC**

Mr. Wayne said on November 2<sup>nd</sup> the Empowering Maine Leadership PAC (the “PAC”), which is former Rep. Barry Hobbins’ leadership PAC, made four \$1,000 contributions, which should have been reported in a 24-Hour Report on November 3<sup>rd</sup>. The PAC discovered it should have filed a 24-Hour Report for these contributions when it filed its 42-Day Post-General Report. The PAC immediately filed the 24-Hour Report but it was 46 days late.

Thomas Federle, Esq., treasurer for the PAC, appeared before the Commission. Mr. Federle said he has been the treasurer for the PAC since 2009-2010 and this was the first time the PAC had been in violation. He said this mistake was a simple oversight. He said the PAC would prefer the penalty be reduced to \$250 but accepted the staff’s recommendation.

Mr. Lee made a motion to reduce the statutorily calculated penalty of \$3,680 to \$500 as recommended by Commission staff. Mr. Nass seconded the motion. Motion passed (5-0).

### **4. Request for Waiver of Late-Filing Penalty – UBC Bad for ME/Friends of Maine Sportsmen**

Mr. Wayne said these matters were combined because the committees share a treasurer and were both involved in the citizen initiative regarding gun background checks. Between October 27 and November 4, UBC Bad for ME (the “BQC”) made several contributions to the Friends of Maine Sportsmen (the “PAC”) and both committees made several media expenditures that should have been reported in 24-Hour Reports. The treasurer, who is the office manager for the Sportsmen Alliance of Maine, had experience filing lobbyist reports but limited experience filing campaign finance reports and had relied on the “Important Dates” section of the Commission’s website to find out when reports were due; she was unaware of the 24-hour reporting period requirements.

Mr. Nass said the circumstances of this case appeared to be similar to the prior case and asked what the distinction was between the cases. Mr. Wayne said each 24-Hour Report had its own deadline and the staff had treated each late report as a separate violation. He said his preference would be to treat multiple violations stemming from a single event as a single violation.

Mr. Wayne said he viewed the late reports taken together as the first violation, meaning that the penalty would be calculated at 2% of the amount reported late, and any subsequent violation would be viewed as a second violation and the penalty would be calculated at 4%. Mr. Lee asked if it was clear in the statute how any subsequent violations should be calculated given how they are viewing this matter. Mr. Wayne said it was up to the Commissioners to decide how they wanted to apply the law and whether they wanted to view this as a single violation or multiple violations. He said Commission staff would follow their lead in future cases.

Mr. Lee said that in the absence of any egregious circumstances, he found it difficult to consider imposing individual and, due to the statutory formula, increasingly higher penalties for each late report. The statutory penalty amounts would be enormous and he questioned whether the Commission would make a correspondingly higher penalty assessment for each report.

Ms. Gardiner observed that the staff recommendation is well below the statutory penalty for each violation. The Commission, in considering how to distinguish between a first, second and third violation, may want to think about three events: the failure to report, the notice received by the group of the late-filing, and the Commission's adjudication of a violation and imposition of a penalty. In this case, the Commission may want to take into account the notice the organizations received because these organizations received the notice for each of the late reports at the same time.

Ms. Matheson said she does not recall seeing this type of case before and expressed concern that the Commission should be careful that whatever decision it makes does not give rise to the perception that committees could stack up a series of late-filed reports and the Commission would consider them as a single violation.

David Trahan, Executive Director for the Sportsmen Alliance of Maine, appeared before the Commission. Mr. Trahan said this was simply a mistake and the committees had no intention to conceal these expenditures. He said if the committees intended to conceal the expenditures, they would have just delayed filing the reports until just after the election, instead of waiting for weeks while the penalties kept increasing. In addition, the committees' treasurer was inexperienced and not familiar with filing campaign finance reports. He said that he would be terminating both

committees and that he has brought in a more experienced person to file the reports so that his staff would not be responsible for filing any future reports.

Joshua Tardy, Esq., counsel for Sportsmen Alliance of Maine, appeared before the Commission. He said he wanted to address Ms. Matheson's concern about committees manipulating the reporting requirements by deliberately holding onto late-filed reports in order to have them considered as a single violation. He said that if the Commission did find evidence of such conduct, it would be an obvious indication of bad faith and the Commission would have no reason to mitigate a penalty under such circumstances. That is not the case with these two committees.

Mr. Nass suggested a reduction of the penalty to \$250. Ms. Lowry said she viewed this as two separate violations for each committee. Mr. Nass suggested assessing a \$250 penalty against both committees. Mr. Lee said these are two separate legal entities and each had violations. He said he was comfortable with the staff's recommended penalty amount and its treatment of the late-filed reports as a single violation, but he would not be comfortable viewing them as one entity and imposing one penalty.

Mr. Trahan said the committees accept the staff recommendation on the penalties and view this as a learning experience. Ms. Matheson said she believed the recommendation was consistent with past findings.

Mr. Nass expressed concern about viewing each late-filed report as a separate violation and ratcheting up the percentage used for the penalty calculation. Mr. Pattershall said that concern could be addressed by focusing on the notice of the late reports given to the committees. In this case, the committees received the notice of late filing for each report at the same time. Ms. Matheson said her concern stems from the dates of the transactions because all of the transactions could not have been filed on one report. Ms. Matheson asked how this type of situation had been handled in the past. Mr. Wayne said that, until 2015, staff had treated each late report as separate violations even if the violations were the result of the same error or event. However, he said has provided guidance to staff to handle that type of situation as one violation starting in 2016.

Mr. Lee said the Commission has had some committees appear before it several times for late report violations and the penalty was increased with each violation because the committees had notice of

the filing requirements and because of the prior adjudications. In those cases, it made sense to increase the penalty calculation for new violations. He said in this case, these violations happened within days of each other and there have been no prior adjudications, so it makes sense to view this as a single violation.

Ms. Lowry said that she thought the motion should be stated in a way that would preserve the Commission staff's discretion to determine the appropriate method of calculating the preliminary penalty based on the facts and circumstances of a particular case.

Ms. Gardiner said the staff could recalculate the preliminary penalty at the 2% penalty rate if the Commissioners wanted to treat the late-filed reports as the first violation, based on the facts and circumstances presented today, to give them a base penalty amount for the purpose of making the motion.

Ms. Matheson made a motion to adopt the staff's recommended reductions of the preliminary statutory penalties to \$500 per entity and determine that, given the circumstances of notice, no prior adjudication by this body, the factual circumstances surrounding the failure to report, and the inexperience of the treasurer, the preliminary penalties shall be calculated at 2%. Mr. Nass seconded the motion.

Ms. Gardiner suggested rephrasing the motion as follows: to reduce the preliminary statutory penalties, which shall be calculated at 2% for each of the violations for each organization, to \$500 for each organization as recommended by staff based on the circumstances of notice, no prior adjudications by the Commission that these organizations had violated campaign finance laws, the circumstances under which the failure to report occurred, and the relative inexperience of the treasurer. Ms. Matheson agreed with the rephrasing of the motion.

Mr. Lee asked whether it would be better to have two motions: one motion to clarify that the violations were being considered as a first offense and the second motion to reduce the statutorily calculated penalties to \$500. Ms. Lowry agreed that it would allow them to better describe the circumstances of their decision. Ms. Matheson said she believed they had addressed all the circumstances in the pending motion. Ms. Gardiner said they had combined the factors for reduction and consideration as a first violation in one motion; however, Mr. Lee and Ms. Lowry

were suggesting there could be some benefit to having two motions. It was agreed to go forward with the motion as stated.

Motion passed (5-0).

Mr. Lee said that the fact that the treasurer for the organizations was inexperienced was an important factor in his decision to support the motion. Had the treasurer had more experience with filing reports, including 24-hour reports, he would have been less inclined to treat all the late-filed reports as a first violation.

### **5. Request for Waiver of Late-Filing Penalties – Hon. Anthony J. Edgecomb**

Mr. Wayne said former Rep. Anthony Edgecomb was running for re-election to House District 148 as a Maine Clean Election Act candidate. On October 27<sup>th</sup>, Rep. Edgecomb paid \$1,998 for a radio ad and should have filed a 24-Hour Report on October 28<sup>th</sup>. The 24-Hour Report was filed on December 14<sup>th</sup>, 47 days late.

Joshua Tardy, Esq., counsel for Rep. Edgecomb, appeared before the Commission. He said this was a simple mistake that came to light when the treasurer filed the 42-Day Post-General Report.

Mr. Lee said this is Rep. Edgecomb's second offense and asked why they should reduce this penalty to the same amount they would for a first offense. Mr. Tardy said \$200 is a significant penalty and there was no intent to deceive or hide the transaction. Mr. Wayne said \$200 is the routine recommended reduction in these kinds of cases where the candidate is well-intentioned but makes a mistake. The staff could increase the amount if that is what the Commissioners want to happen. Mr. Lee said he believed a second offense should have a higher penalty. Mr. Wayne said the first violation was filing the 11-Day Pre-General Report one day late but the 24-Hour Report was actually due before the 11-Day Pre-General Report, which would technically make it the first offense. Ms. Matheson said she would leave this as the second violation with the 4% calculation but reduce the penalty to \$200.

Mr. Pattershall made a motion to reduce the statutorily calculated to \$200 as recommended by Commission staff. Ms. Matheson seconded the motion. Motion passed (5-0).

## **6. Request for Waiver of Late-Filing Penalty – Rock Alley**

Mr. Wayne said Mr. Alley was running for Senate District 6 as a Maine Clean Election Candidate. Mr. Alley was required to file the 42-Day Pre-General Report on September 27<sup>th</sup>. The report was filed four days early but was missing a \$5,063.04 transaction. The treasurer amended the report on December 7<sup>th</sup> to include this transaction. The report was considered to be 71 days late because it was substantially non-conforming.

Rock Alley and his wife Carmen, who served as his Campaign Manager/Deputy Treasurer, appeared before the Commission. Mr. Alley said this was his first time as a candidate. He said this was an oversight caused by a miscommunication regarding a change to the password for the campaign bank account and his treasurer's move to Connecticut. Mrs. Alley said every time they logged into the bank account, they had to change the password and she forgot to let the treasurer know about the password change.

Jennifer Jainer, treasurer for Rock Alley, participated via telephone. Ms. Jainer said her house in Maine had sold faster than anticipated, which triggered her move to Connecticut sooner than planned. She said that, combined with the password problem with the bank account, led to this error.

Ms. Matheson asked if anyone else could have filed this report. Mr. Wayne said Mrs. Alley, as the Deputy Treasurer, could have filed the report if she had credentials. However, Mrs. Alley said she did not have access to the Commission's e-filing system in order to file reports.

Mr. Nass made a motion to reduce the statutorily calculated penalty to \$200 as recommended by Commission staff. Mr. Lee seconded the amended motion. Motion passed (5-0).

## **7. Request for Waiver of Late-Filing Penalty – Hon. Michael McClellan**

Mr. Wayne said Rep. McClellan was running for re-election to House District 66 as a traditionally financed candidate. On October 28<sup>th</sup>, Rep. McClellan paid \$2,431.48 for a mailer and was required to file a 24-Hour Report on October 29<sup>th</sup>. Rep. McClellan discovered he should have filed a 24-Hour Report when he filed his 42-Day Post-General Report. The report was filed on December 20<sup>th</sup>, 52 days late.

Rep. McClellan appeared before the Commission. He said this was his fourth campaign and he lost in November. Rep. McClellan said he had made a commitment for a mailer with a local printer, whom he has used in the past, but he did not receive a bill at the time he made the commitment and then forgot to let his treasurer know about the transaction. He said this was simply an oversight. This was busy time of year for him and his treasurer works as a town clerk, so she was very busy, too.

Mr. Nass made a motion that the statutorily calculated penalty be reduced to \$200. Ms. Lowry seconded the motion. Motion passed (5-0).

Mr. Lee made a motion, seconded by Mr. Nass, to adjourn. The motion passed. The meeting adjourned at 10:50 a.m.

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