



Minutes of the February 22, 2018, Meeting of the  
Commission on Governmental Ethics and Election Practices  
45 Memorial Circle, Augusta, Maine

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

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

Commissioner Matheson convened the meeting at 9:01 a.m.

*Agenda Item 2 was postponed to the March 28, 2018 meeting.*

**1. Ratification of minutes from December 20, 2017 Meeting**

Mr. Nass made a motion to accept the minutes as drafted; Mr. Pattershall seconded the motion.  
Motion passed (5-0).

**3. Request to Investigate Maine Examiner and Maine Republican Party**

Mr. Wayne explained that the Maine Democratic Party (“MDP”) requested an investigation to  
determine whether the Maine Examiner website and the Maine Republican Party have complied  
with the financial reporting and disclosure requirements.

Mr. Wayne said that Jason Savage, the Executive Director of the Maine Republican Party  
(“MRP”) submitted a written statement explaining that he is the sole author and contributor to  
the Maine Examiner website, which he operates on his own time and which he has done outside  
of the scope of his employment with the MRP. Mr. Savage further stated that total cost of the  
Maine Examiner website to date is \$74 for the domain name registration, which he paid out of  
pocket and that the postings related to the mayoral runoff election in Lewiston on December 12,  
2017 did not involve any extra cost. The MRP responded it did not authorize the Maine  
Examiner and did not contribute any funds to the operation of the website. Until recently, the  
MRP did not know the identity of the author, or who owned or operated the website. The MRP  
stated it filed all the appropriate reports with the Lewiston city clerk and the Commission. It did  
make expenditures to advertise the Maine Examiner stories on the MRP’s Facebook page, and  
the ads have the required disclosure statement on them indicating the ads were paid for by the  
MRP.

Kate Knox, Esq., on behalf of the Maine Democratic Party (“MDP”), appeared before the Commission and introduced Isabel Mullins, Esq., of BernsteinShur, who also worked on this matter. Ms. Knox said that the threshold question of whether Mr. Savage and MRP were connected to the Maine Examiner has been answered. The next question before the Commission is to inquire into the relationship between Mr. Savage and the MRP, the relationship between Mr. Savage and the Maine Examiner, and how those relationships are connected. Ms. Knox said that Mr. Savage claims his actions are independent of the MRP. However, merely claiming independence is not enough and the Commission should investigate further into the scope of Mr. Savage’s employment, keeping in mind that the issue of agency is paramount to the issue at hand.

Ms. Knox said there is reason to believe Mr. Savage was operating as an agent of the MRP. Ms. Knox referred to the law of agency as explained in the Restatements and Maine court decisions setting forth a three-part analysis to determine whether the individual was acting within the scope of employment:

First, is the activity of the kind he is employed to perform, similar to what he performs at work? Mr. Savage’s job as the executive director of the MRP is to support Republican candidates, to oppose Democratic candidates, to push news out to the media, and to highlight activities that help or hurt candidates. She said that this is exactly what the Maine Examiner was doing.

Second, does the activity occur substantially within the authorized space and time limits of the general work day? The posts on the Maine Examiner website and reposts by the MRP occurred during the work day and the idea that this was strictly off-hours or volunteer time in the evening is doubtful.

Third, is the activity actuated at least in part by a purpose to serve the master? Ms. Knox said there could be no doubt that the posts regarding Ben Chin were to support the goal of electing a Republican in the Lewiston mayoral race, which was a priority of the MRP. Regarding the scope of employment, Ms. Knox cautioned the Commission not to allow an individual to say, “I was doing it off-hours.” Courts and the Restatements have laid forth a method of assessing and determining whether the activities make an individual an agent of a principal.

Ms. Knox urged the Commission to examine how the MRP could claim it did not know Mr. Savage was doing this, given his role as executive director of the MRP. Ms. Knox said there were other aspects surrounding the Maine Examiner website and the MRP's Facebook ads that should be taken into consideration to determine whether the Maine Examiner or the MRP should have filed an independent expenditure ("IE") report. For example, if Mr. Savage was involved in the MRP's Facebook ad relating to the Lewiston mayoral election, should his compensation be included to determine whether an independent expenditure report should have been filed?

In response to a question from Mr. Nass, Ms. Knox expressed confidence in Commission staff being able to come to a definitive conclusion regarding the roles played by Mr. Savage, the Maine Examiner, and the MRP with respect to the Maine Examiner's postings about the Lewiston mayoral election.

Mr. Nass pointed out that the results of the election cannot be changed. Ms. Knox acknowledged that the loss could have many reasons but she maintained that it is fair to say the Maine Examiner's actions were a major factor in the outcome of the election as highlighted by the media coverage and poll responses. Ms. Knox emphasized the MDP's request was to determine whether the proper disclosures were made and whether an independent expenditure should have been reported. Ms. Knox maintained there are many unanswered questions regarding the Maine Examiner website and the MRP's and Mr. Savage's activities and expenditures regarding the website. She said the purpose of the investigation would be to answer those questions.

Mr. Lee asked whether, in addition to the direct costs of the communication itself, the cost of staff time should be included to determine if the \$250 threshold for an independent expenditure report has been exceeded. Ms. Gardiner confirmed that the definition of expenditure includes "anything of value" which would include staff time. She said that there may be some issues in the practical application of that definition but the Commission's rules and guidance would address that.

Mr. Wayne stated the full cost of staff time in preparing and disseminating a communication should be included. However, the staff could not find any independent expenditure reports filed by the MDP and MRP in 2016 that contained expenditures for staff time.

In response to a question from Mr. Lee regarding the costs of the Facebook posts, Ms. Knox said that it was not possible to connect the expenditures reported in the MRP's campaign finance reports with the amounts in the Facebook printout in the MRP in its response. Ms. Knox said she

was unsure if the costs of the communication came close to \$250 because that level of detail has not been supplied.

Ms. Knox said that the MDP's position was that because Mr. Savage was an agent of the MRP, the costs of the Maine Examiner and the MRP should be combined to see whether the cost of a communication exceeded \$250.

Regarding the applicability of the disclosure requirements under 21-A M.R.S.A. § 1014(2-A) in municipal elections, Ms. Knox said that she did not agree with the Commission staff's interpretation. She stated that interpretation would create an enormous loophole, whereby there would be no disclosures on communications in special and municipal elections. She further stated the Maine Examiner posts fit the definition of express advocacy in that there could be no other reasonable interpretation of the Maine Examiner posts than to advocate against Ben Chin, and as such a disclosure was required regardless of when they were made, provided the posts also cost more than \$100.

Joshua Tardy, Esq., appeared before the Commission on behalf of Jason Savage and the Maine Examiner. He stated that his "brief accurate submission" spoke for itself. Mr. Tardy explained that the Maine Examiner has posted and is still posting articles on a range of topics on its website and clarified that Mr. Savage's only expenditure regarding the Maine Examiner was \$74.11 for the domain registration and there were no expenditures on Facebook postings. Mr. Tardy said if the Commission decided to initiate an investigation, Mr. Savage would be completely cooperative.

Mr. Nass said that the Maine Examiner articles were brief and did not seem to involve a great deal of research or effort to compose them. Mr. Tardy agreed and said he could provide Mr. Savage's affidavit under oath confirming the factual assertions in his response to the Commission.

Mr. Lee asked why the identity of the owner and author of the Maine Examiner was not revealed when requested, pointing out that Mr. Savage's involvement was only revealed after an examination of the website's meta-data. Mr. Tardy replied he was uncertain why Mr. Savage chose to remain anonymous. At the advice of counsel Mr. Savage chose to step forward once he was identified.

Jason Savage appeared before the Commission. Responding to questions from Mr. Lee, Mr. Savage said that he is the full-time Executive Director and that 7 other full-time employees work

for MRP, adding that number expands when temporary workers come on during election periods. Mr. Savage stated that his job hours vary depending on what is required of him. He may take off a Tuesday, or work evenings and not mornings, or work all day without breaks, and even work some weekend days. He said he felt it would be a disservice to the Party to not work when he needs to work and take time off when he can.

Mr. Lee asked Mr. Savage who signed the checks to pay for the MRP's eight Facebook ads. Mr. Savage replied that the payments for the Facebook ads were signed off by the treasurer after Mr. Savage sought and obtained the treasurer's approval for the expenditures. Mr. Savage said that he was careful to always work on the Maine Examiner on his personal time and that he never put off his work responsibilities for the MRP to work on the Maine Examiner. Mr. Lee stated that he was bothered by what appeared to be the evidence of Mr. Savage working on the Maine Examiner during his regular works hours for the MRP. He said that the MDP argued that some portion of Mr. Savage's time on the Maine Examiner articles should be properly attributed to the MRP's cost for the Facebook ads.

Mr. Tardy said there are volumes of campaign finance reports on both sides disclosing expenditures for production costs and third party vendors, but he had yet to find expenditures for prorated staff time.

Mr. Lee said that, as the Commission is considering whether there are sufficient grounds to initiate an investigation, he is troubled by the lack of disclosure of the authorship of the Maine Examiner, even when Mr. Savage was directly asked this question. It was only after Mr. Savage's connection with the Maine Examiner was revealed by another person looking at the website's metadata that Mr. Savage acknowledged his role but still claimed that the activities of the Maine Examiner and the MRP, of which Mr. Savage was the Executive Director, were distinct from one another. The Commission has heard Mr. Savage's explanation for why he chose to be anonymous when the Maine Examiner was starting up. However, the fact remains that he continued to maintain that he was not involved with the Maine Examiner even after its ownership became an issue in the Lewiston election. Mr. Savage's explanation for maintaining this anonymity is one viewpoint, but another is that the lack of disclosure of the website's ownership implies there may be something to hide.

Ms. Gardiner asked Mr. Savage when he made the MRP aware of his authorship and involvement with the Maine Examiner. He replied he did so after the MDP's letter to the

Commission. Ms. Gardiner asked whether, given he is a salaried employee, there was an understanding between him and the Party regarding his freedom to engage in outside activities and whether he needed to inform the Party about them. Mr. Savage stated that there was no specific policy. Ms. Gardiner asked if it was his decision for the MRP to post the Facebook ads. Mr. Savage stated it was a decision made by him and the treasurer who authorized the payment; no others were involved in any significant way.

In response to a question from Ms. Matheson, Mr. Savage explained that his job includes overseeing the staff, working with the Party's Chair, fundraising, recruiting candidates, managing field staff and volunteers, and discussing policy issues. Mr. Savage explained that his job duties also include giving guidelines for candidates to use when campaigning. Mr. Savage stated he is required to have double authorization with the treasurer to move forward with spending. He stated sometimes he comes up with the initial idea, and is involved in the budget process along with others.

Mr. Nass inquired about the press exemption and requested some clarification with respect to the Maine Examiner. Mr. Tardy explained that the provision set forth by the Commission states that the publication cannot be owned by a political committee. There is also a requirement of the disclosure of ownership; however, the Commission's rule is unclear as to when that disclosure must be made.

Mr. Lee said that the strong implication in the rule is that the disclosure of ownership must be contemporaneous with the publication. He said that it does not make sense that a person who publishes anonymous material can claim the press exemption months after publication because that person's identity has been uncovered and revealed by another.

Ann Robinson, Esq., appeared before the Commission on behalf of the MRP. She said that there was no connection between the owner and operator of the Maine Examiner and the MRP until the request for investigation was filed. There was no cooperation between the Maine Examiner and the Party, and the Maine Examiner is not an instrument or asset of the Party. Mr. Savage consulted with the Party's Chair regarding the Facebook ads and the treasurer authorized the payment. Ms. Robinson stated that the contract with Facebook had a budget not to exceed \$250 per ad and that amount was not exceeded for any of the Facebook ads. Ms. Robinson cautioned the Commissioners against accepting the MDP's argument that the personal activities of an

employee of a political party should be imputed to the party itself. Ms. Robinson stated that, with respect to the Maine Examiner, Mr. Savage acted independently and on his own time.

Chair Demi Kouzounas, DDS, could not be present but provided Ms. Robinson an affidavit attesting that she had no knowledge of the Maine Examiner prior to the filing for the request for an investigation. Ms. Kouzounas stated she was aware of and approved the postings on the MRP's Facebook.

In response to a question from Mr. Nass, Ms. Robinson said, even assuming there is no issue with respect to standing, the MRP has complied with the reporting and disclosure requirements. However, the standing issue is not a minor matter. The Legislature established a different enforcement procedure when it comes to municipal elections. Under the statute, the municipal clerk has the discretion to refer a matter to the Commission and that did not happen in this case.

Ms. Gardiner asked Ms. Robinson what her thoughts were regarding the last sentence of 21-A M.R.S.A. § 1011(3): "The commission does not have responsibility to oversee the filing of registrations or campaign finance reports relating to municipal campaigns, except that the commission has the discretion to conduct investigations and assess penalties under subsection 3-A." Ms. Robinson replied she believed that section needs to be considered in tandem with the section that says that the clerk will bring matters to the attention of the Commission and then the Commission has the discretion to investigate.

Mr. Lee asked Ms. Gardiner for her response to Ms. Robinson's interpretation of the jurisdictional issue. Ms. Gardiner said she had not read the statute as a limitation on the Commission's jurisdiction but rather its purpose is to ensure that the burden of investigations and enforcement does not fall upon the municipalities. If the clerk believes a matter is a serious violation of campaign finance law, the clerk has the option to refer it to the Commission. She did not read the statute to mean that the Commission does not have the authority to act on its own simply because the clerk did not refer it.

Mr. Lee said that it would be troubling that an investigation of a campaign finance violation would not be able to take place merely because of the failure of the clerk to refer it to the Commission, when the Commission had knowledge of the violation.

There was a discussion regarding how to understand the relationship between the amounts reported in the MRP's campaign finance report and the Facebook budget for the ads contained in Exhibit F of the MRP's response. Mr. Savage explained that the Facebook budget was set at

\$949.99 for seven ads. The actual amount spent was \$949.43. The amount spent per ad was nearly equal to the amount in the Facebook budget.

Mr. Lee inquired about how much work is involved in taking an article from the Maine Examiner and posting it on Facebook. Mr. Savage stated it is minimal in effort and takes a matter of a few clicks of the mouse. Mr. Savage explained that creating the article itself takes more effort than sharing the article and that he did not share the article anywhere else.

Ms. Lowry asked Mr. Savage if, when he wrote the articles about the Lewiston mayoral race, he intended to have the MRP boost them on Facebook. Mr. Savage replied that when he wrote the articles he did not know the MRP would be spending money on advertising the articles and that there was no intent that they would be shared on the MRP websites.

Mr. Lee inquired why the Party's Chair did not request the author's identity. Ms. Robinson responded that the Chair's due-diligence was to make sure the information in the article had been verified by Mr. Savage.

Ms. Knox said that the breakdown of the costs of the Facebook ads indicate that the MRP made an expenditure of \$250 for one of the ads. If there was any additional amount spent on that ad, it would constitute a reportable independent expenditure. She stated that this spending is so close to the limit that it warrants further investigation to determine what other costs should be attributed to the Facebook ads. Ms. Knox also reiterated that the MDP did not claim that Mr. Savage did not have a First Amendment right to speech in this instance because of his position as an employee of the MRP. The MDP's request for an investigation is for the Commission to determine whether the MRP should have reported an independent expenditure, not whether Mr. Savage should have published the articles.

Mr. Lee said an important question that has yet to be answered is whether Mr. Savage truly acted independently of the MRP in writing and publishing the Maine Examiner articles. Questions about the identity of the author of the Maine Examiner articles were rebuffed. It was only when someone undertook an analysis of the metadata of the Maine Examiner website did Mr. Savage's involvement come to light. Some of the work in creating the articles was done during Mr. Savage's regular work day. As the staff has indicated, the cost of creating campaign communications may include staff time. The Facebook ads boosting the Maine Examiner articles indicates how closely intertwined the Maine Examiner, Jason Savage and the MRP are.



Mr. Lee said these and other factors seem to meet the threshold question of whether Mr. Savage truly acted independently of the MRP and warranted an investigation.

Mr. Pattershall said he saw serious problems in attempting to itemize the cost of staff time spent on communications by splitting hourly wage and adding that figure to the total expenditure cost. He did not see that such a calculation could be done in a rationale or equitable manner.

In response to a question from Mr. Lee, Mr. Wayne stated that were the Commission to initiate an investigation, the staff would interview Mr. Savage about the different activities taken to research, write and post the articles. However, it may be difficult to reconstruct the time spent on these activities. The Commission would also have to accept the premise that a portion of Mr. Savage's salary should be attributed to his work on the Maine Examiner.

Ms. Matheson reminded the Commission that the standard is that an investigation will be undertaken if the reasons stated in the request show sufficient grounds for believing that a violation may have occurred.

Mr. Nass said he did not believe this threshold has been met.

Ms. Lowry stated she was troubled by the anonymity and said that the public, specifically the Lewiston voter, did not have a chance to consider the source of the articles in the Maine Examiner because people look at certain sources with varying degrees of skepticism.

The affidavit of Dr. Demi Kouzounas was introduced and considered by the Commission.

Ms. Matheson said she was concerned about the lack of disclosure; however, she would not be supporting further investigation.

Mr. Nass moved that the Commission deny the request to investigate this issue brought before the Commission by the MDP. Mr. Pattershall seconded. The motion passed (3-2). (Ms. Lowry and Mr. Lee opposed).

Mr. Wayne introduced new staff person, Commission Assistant Katie Feliciano.

Mr. Nass made a motion, seconded by Ms. Lowry, to adjourn. The motion passed (5-0).

The meeting adjourned at 11:32 a.m.

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