



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

Minutes of the April 26, 2011, Meeting of the
Commission on Governmental Ethics and Election Practices
Held at the Commission Office, 45 Memorial Circle,
Augusta, Maine

Present: Walter F. McKee, Esq., Chair; André G. Duchette, Esq.; Hon. Edward M. Youngblood; Margaret E. Matheson, Esq., Michael T. Healy, Esq. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:00 a.m., Chair Walter McKee convened the meeting.

The Commission considered the following items:

Agenda Item #1. Ratification of Minutes of the February 17, 2011 Meetings

Ms. Matheson moved to accept the meeting minutes as drafted. Mr. Duchette seconded. Motion passed unanimously (5-0).

Agenda Item #2. Public Hearing on Proposed Amendments to the Commission Rules

At the March meeting of the Commission, the members agreed to accept public comment on proposed amendments to the Commission's rules drafted by staff. On April 6, 2011, the Commission mailed a memo to interested persons inviting them to comment. The Commission held a public hearing to receive comments from the public. Interested persons may comment in writing until 5:00 p.m. on Friday, May 6, 2011.

Mr. McKee opened the public hearing for comment.

Ann Luther, co-chair of Maine Citizens for Clean Elections (MCCE), said overall they were in support of the proposed changes. She said they had some questions regarding the proposed rule on coordination. She said they support the effort to create greater clarity regarding what does and does not constitute coordination between candidates and independent spenders. They believe coordination has been

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interpreted too narrowly in the past and, as a result, candidates may have felt more constrained in what they can do with their party and supporters.

The proposed changes to the rules provide an exception to the coordination presumption for hand painted or lettered signs that cost \$100 or less. They did not understand why there was a dollar threshold on that exception to the presumption.

The other exception they had a question about is the one that applies to an individual who advised a candidate in a volunteer capacity in the year prior to making the expenditure. An expenditure by that individual will be presumed to be coordinated with the candidate. However, there is another section of the proposed rule in which it appears that the same scenario would not be considered coordination.

Ms. Luther said that the section that allows a candidate to tell a PAC or party committee or other spender not to make an independent expenditure is written in such a way that leaves room for some coordination to occur. They believed the rule could be improved by making it clear that it would not be coordination if a candidate were to make a blanket statement to potential spenders not to make any independent expenditures on the candidate's behalf.

Regarding the other proposed rule changes, MCCE thought the changes were important and well done.

At this point, having no other requests to comment, Mr. McKee closed the public hearing portion for rule-making and said written comments may be received until 5:00 p.m., on Friday, May 6.

Agenda Item #3. Complaint against Maine Republican Party/Late Independent Expenditure Report

On Thursday, February 24, 2011, the Maine Republican Party filed an independent expenditure report for a mailing in support of the Republican candidate in the March 1 special election for House District 11. The report was apparently filed one day late. The routine penalty for the late filing was \$24.69. The Maine Democratic Party filed a complaint urging the Commission to assess an additional penalty under 21-A M.R.S.A. § 1127(1) because the late report delayed payment of matching funds to the Democratic nominee by one day.

Mary Erin Casale, executive director for the Maine Democratic Party, said this late filing occurred during a critical time (six days) before a special election. She said the election was in a rural district and it is difficult to make expenditures without a great deal of forethought and time to plan ahead. Placing an ad in a weekly newspaper requires planning ahead by several days. She said another concern was the amount of money which was delayed, nearly \$2,500, which is a large amount in a House race in a rural district. She said this late filed report appears to follow a similar pattern of other late filed reports by the Republican Party in which the report is filed on the day before a weekend when the opponent will have a more difficult time making arrangements to use the matching funds. This has a very damaging impact on the candidate and on how the Clean Elections program works. She said the Maine GOP clearly knows the rules and has a long history of filing reports. In a general election, when there are 151 House races and 35 Senate races, an oversight such as this may be more understandable. However, there was only this one race that the Republican and Democratic Parties were involved in at the time of the special election. The fact that the Republican Party used a volunteer to act as a liaison in the special election does not relieve the Party of the responsibility to file timely reports. The delay negatively affected the Democratic candidate's ability to receive and spend matching funds, which is a violation of the Maine Clean Election Act. She said penalties assessed should be significant enough to deter all parties from filing reports late and to encourage compliance.

Mr. McKee asked how the delay in funding impacted the candidate with regard to how she would have used the money if she received it earlier.

Ms. Casale said the candidate did not provide that information.

In response to a question from Mr. Healy, Ms. Casale responded that the candidate did spend some of the matching funds but not all of it.

William Logan, Esq., counsel for the Maine Republican Party, said the party does not dispute that the report was filed one day late and has already paid the preliminary penalty. The party currently has a limited staff during this time of year which is different than during a regular election cycle. The party only had two employees, the executive director and the receptionist. In this case, a volunteer jumped the gun and authorized this expenditure to the vendor absent any authority from the party. In fact, the party had not

even made the decision to make the expenditure. The executive director discovered the error two days later when she contacted the vendor to actually place the order. At that point, she filed the report immediately and put the correct dates on the form. Mr. Logan said the Commission should review past practice with regard to this type of error. He referred to a case during a 2009 special election in Farmington in which the Maine Democratic Party was fined \$250. He said the two cases were very similar but there were some differences. The Commission determined that the late filing in 2009 was the result of an internal error at the Democratic Party office, as it was in this case. He said in this case the expenditure was higher than the expenditure in 2009. However, the report was filed one day late as opposed to four days late in the 2009 case. The Maine Democratic Party had already received a significant late filing penalty in the 2008 general election, while the Maine Republican Party has not filed a report late in this election cycle. He said the delay was only one day and the candidate had an opportunity to use the funds to her benefit but chose not to use them entirely.

Mr. McKee asked how close to the election the delay was for the 2009 special election case.

Mr. Logan said he believed it was thirteen days prior to the election.

Mr. McKee said the timing in this case was much closer to the election and just before a weekend when business could not be done until the following Monday.

Mr. Logan said the Commission's practice, historically, has not been to be punitive but more to ensure that everyone follows the rules. This late filing on the part of the Maine Republican Party is an isolated incident.

Mr. McKee said that Ms. Casale had a valid point when she said that this was the only candidate the GOP had to monitor and there were no other matters going on at the time. He asked Mr. Logan whether the party should have had a heightened level of awareness of what was going on in that race.

Mr. Logan explained that normally there would be experienced staff during the regular election cycle to make sure that the proper procedures were followed. However during this non-election period, the

executive director and one other person are the only people in the office so it was difficult to follow the normal internal procedures that are in place in a regular election.

Ms. Matheson asked when the funds were actually available to the candidate.

Mr. Wayne confirmed that she received the funds on Thursday and had access to them by Friday.

Mr. McKee said it would have been most helpful to have the candidate present to get more detailed information regarding this matter and asked for more information from staff regarding the amount of money spent and what it was spent on in order to make a final determination.

In the interest of conserving time, the meeting moved on to the next agenda item while additional information was gathered by Commission staff.

Agenda Item #4. Audit of 2010 Campaign of Joseph C. Palmieri

Agenda Item #5. Request for Waiver of Late Filing Penalties/Joseph Palmieri

The Commission staff audited the 2010 Senate campaign of Joseph C. Palmieri, who participated in the Maine Clean Election Act (MCEA) program. The Commission's final audit report concluded that there were four findings of violation. In the seed money report filed on June 4, 2010, the candidate reported expenditures which had not been made, which resulted in an overpayment of \$857.99 in MCEA funds. In addition, the campaign apparently did not return all unspent MCEA funds after the election. The candidate has responded that the campaign had no intention of filing an inaccurate report and that any mistakes were due to inexperience and personal obligations of the candidate. Mr. Wayne explained that the Commission was hopeful to finally get a full, more detailed explanation from Mr. Palmieri as to the final results of the audit report findings.

Vincent Dinan, staff auditor, explained the findings more thoroughly. He said the first finding was false reporting on the seed money report. He said the audit process looks at the amount of contributions and the amount of expenditures. Mr. Palmieri reported \$1,030 of contributions and \$851.39 of expenditures. He said as a result of reviewing the campaign bank account, he saw that \$1,055 went into the account (\$25 more than the contributions reported on the seed money report) and there was only a single disbursement

for purchase of bank checks which was not reported at all. He said because there was only one expenditure actually made and not multiple expenditures totaling \$851.39, the Commission actually ended up over paying the candidate based upon the seed money report he filed. He said the second finding was reporting expenditures that did not occur during the qualifying period and three of those had no supporting documentation at all. The other expenditures listed in the seed money report were actually paid after the candidate was certified and finding #3 addresses that issue. He said there were five expenditures that were made during the qualifying period and then paid for later from Clean Election funds, which is prohibited. Finding #4, he explained, was the failure to return Clean Election funds at the end of the election cycle. He said on December 31, the bank statement indicated that the remaining balance in the campaign account was \$1,450.33. On January 3, after Candidate Registrar Sandy Thompson told Mr. Palmieri that he needed to return all the funds, he returned \$641.74, which was the amount of the cash balance reported in the 42-Day Post-General Report. It was not the entire balance in the campaign account. As of today, there is still a balance in the account of \$808.59 which has not been returned to the Commission.

William Logan, Esq., said he was assisting Mr. Palmieri in the audit but he was representing him with respect to the request for a waiver of the late filing penalty. He said with regard to finding #1, the overpayment of Clean Election funds resulted from Mr. Palmieri's reporting obligations he incurred during the seed money period on the wrong portion of the report. He said these obligations should have been reported on Schedule D as debts, they were not fabricated or false expenditures. He said Mr. Palmieri was a first-time candidate and was inexperienced as was his treasurer. He said that even though this mistake resulted in Mr. Palmieri receiving more MCEA funds than he should have, ultimately he did not spend more than he should have if the seed money report had been filled out correctly. He also said this did not trigger any matching funds for his opponent. Thus, this clerical error did not cause any harm to the public. Mr. Logan said regarding the failure to return the funds, Mr. Palmieri returned the cash balance as reported on his final 42-Day Post-General Report. He said Mr. Palmieri does intend to return all the funds today but wanted to be sure the process ran its course. He said that Mr. Palmieri was concerned that by returning the entire bank balance he may trigger another reporting violation.

Joseph Palmieri said this was a new process for him. He said he never intended to try to take anything that was not his or knowingly file a false report or lie to the Commission, his opponent or his family. He said he relied on friends to help him out because he was new at running a campaign. His deputy treasurer was a

close friend and she filed all the reports. He said his treasurer had nothing to do with the filings. He said there was never an intention to deceive anyone. He said the money in the checkbook was left there because he thought it might trigger another late report but in hindsight he said he should have sent it all back. He said there was never any intent to use it for anything other than what it was intended.

Mr. McKee said the Commission has to come to a decision today and it is helpful for the Commission and the candidate to have as much information prior to the meeting. He said that the information that Mr. Palmieri provided at the meeting was requested months ago by staff. He said another issue was the money not being returned to the Commission long after notice was given to return the funds. He said Mr. Palmieri did not respond to the staff's requests for several months and that lack of communication was cause for major concern. The severity of the issues is not mitigated by Mr. Palmieri's willingness to write a check out today for the remaining balance in the campaign account.

In response to a question from Mr. Healy, Mr. Palmieri said he became a replacement candidate in April before the primary.

In response to questions from Mr. Healy, Mr. Palmieri said he was a television reporter for approximately 25 years and currently owns a restaurant and does a sports radio broadcast in Portland. He explained he had no background in politics. He had no help with the clerical aspects of his campaign so he asked friends to help him out. He said he wrote all the checks but he did not review the reports or the invoices that came in. He said his deputy treasurer did all that. Mr. Palmieri could not say for certain when the reporting errors came to his attention.

Mr. Healy asked Mr. Palmieri if there was anything from a factual point of view in Mr. Dinan's report with which he disagreed. Mr. Palmieri said he did not.

Mr. Healy asked Mr. Palmieri if the funds in the campaign account had ever been drawn out and then replaced. Mr. Palmieri said they had not.

Mr. Duchette asked if the amount in the account was \$808.59 and Mr. Palmieri explained that the actual balance was \$858.59 because there was a \$50 deposit required when opening the account.

Mr. Dinan confirmed that the Commission's request was for the \$808.59.

Mr. Healy referred to the expenditure reported on the seed money report and asked for clarification whether the expenditures listed were actually made at the time they were reported to be made.

Mr. Dinan explained that there were no disbursements from the campaign account during the period covered in the report.

Mr. Healy confirmed with Mr. Palmieri that the deputy treasurer actually filled out and filed this report.

Mr. Palmieri confirmed that and said he did not see the report before it was filed.

Mr. Healy requested that Mr. Palmieri confirm that these expenditures were not made as the report shows. Mr. Palmieri said they were not.

Mr. Logan said there was no disbursement made but the obligation had been incurred and should have been reported as a debt on another schedule on the report at that time and then reported as a payment on a later report.

Mr. Wayne said the instructions on the data entry page for Schedule B for expenditures clearly states, "Only enter expenditures that have actually been paid." He explained that the Guidebook also explains that any unspent seed money will be deducted from the first payment of Clean Election funds and that obligations incurred do not count as expenditures for the purposes of calculating the amount of the initial distribution.

Mr. Duchette said because these expenditures were listed on Schedule B, Expenditures, and not listed on Schedule D, Debts, Mr. Palmieri received more funds than he should have.

Mr. Dinan said there was no disbursement of \$520 for Creative Imaging Group.

Mr. Palmieri stated he has checked and every bill from Creative Imaging has been paid.

Mr. Dinan said every invoice and disbursement from the bank account has been tracked and there was no disbursement made in the amount of \$520 to Creative Imaging. He said he had only seen that particular invoice just prior to the meeting. Mr. Palmieri had never produced that invoice even though Mr. Dinan had made several requests for it beginning in January. Mr. Dinan said the disbursement in that amount was never made.

Mr. Palmieri said there was a check written in July for \$1,746 which he believed covered that \$520 invoice.

Mr. Dinan said each invoice from Creative Imaging was matched to a disbursement from the campaign account. He said there was an invoice for \$1,746 and there was a corresponding payment in that amount. He said he cannot tell from an invoice whether it dates back to the qualifying period or if it related in any way to the \$520 invoice produced before the meeting, but the \$1,746 was paid after the qualifying period ended.

Mr. Healy asked Mr. Palmieri if he handled the account with Creative Imaging.

Mr. Palmieri said that he wrote the checks but did not place the orders.

In response to a question from Mr. Healy, Mr. Palmieri said that campaign staff placed the orders.

Mr. Healy asked if the deputy treasurer made the order. Mr. Palmieri said no.

Regarding the payment to Anthony Foster, the \$250 amount was reported as an expenditure on May 25, 2010, but there was no corresponding payment from the campaign account. Mr. Dinan said that the invoice for the \$250 charge was not produced until just before the meeting. There was an invoice for \$300 dated June 1, 2010 from Mr. Foster and a corresponding payment from the campaign account on July 8, 2010 for that amount. There was only one disbursement for \$300 to Mr. Foster from the campaign account. From those facts, it would appear that Mr. Palmieri used MCEA funds to pay for goods and services received in the qualifying period.

Mr. Wayne asked Mr. Palmieri whether he had received any services from Mr. Foster by the time the report was filed on June 4, 2010.

Mr. Palmieri said they had talked about the website but it had not been up and running. He said that he does not think that it was up at the time the report was filed.

Mr. Wayne asked him what the basis was for reporting the \$250 expenditure in the seed money report. He said the campaign's deputy treasurer must have gotten the amount from someone or from something in order to put it into the report.

Mr. Palmieri said that his mindset was that when he got a bill, he just wanted to pay it.

Mr. Wayne said that Mr. Palmieri reported an expenditure to Creative Imaging on May 25, 2010 in the amount of \$520. He said that there was no separate payment in that amount made from the campaign account.

Mr. Palmieri said he believed that payment was lumped in with another payment to Creative Imaging for palm cards and signs.

Mr. Wayne explained that the payment of \$1,718 that the campaign made in July was for lawn signs and stakes. There was a Creative Imaging invoice for 10,000 palm cards that were delivered in June, but that invoice was for \$795. He asked Mr. Palmieri what the basis was for reporting a \$520 payment to Creative Imaging in the seed money report. He also asked Mr. Palmieri when he received the invoice for \$520 that he brought to the meeting.

Mr. Palmieri said he just received it in the last few days after requesting it from his staff.

In reference to the Creative Imaging expenditure for \$520 listed on the seed money report, Mr. Healy asked what basis the deputy treasurer had for typing that into the report when it had not been paid.

Mr. Palmieri said he assumed that the campaign received the information about the amount of the invoice and so she included it in the report.

Mr. Healy asked Mr. Palmieri if he had asked the deputy treasurer why she reported it and he said he had not asked her that. He said the only conversation he had was whether she had the information she needed and whether the report was filed on time.

Mr. Logan stated that it was not unusual to receive an invoice for a service with a different amount than you expected. He said the campaign staff indicated that there was a bill paid for signs and palm cards. Mr. Palmieri believes only one order was placed. It was possible that the final amount was higher than originally expected.

Mr. Palmieri said in his restaurant business when he orders items, he does not pay for the item until he has received it. He does not pay for goods before he receives them. He said he should have been aware of the difference in running a campaign but he was not.

Mr. McKee said that a candidate can gain an advantage by reporting that all the seed money was spent, even if it was not, because that way the candidate will receive the full amount of the distribution. It may have been that in the end no real advantage was realized because the candidate did not spend more than he or she was allowed to spend, if the report was completed correctly. But that is not the issue here.

Mr. Palmieri said there was no intent to deceive any one or get money that was not his.

Mr. McKee explained that procedurally, the Commission had to make a finding before an assessment can be made.

Mr. Wayne explained there was no dispute as to whether the reports were late; however, Mr. Palmieri has asked for a waiver of the penalty amounts.

Mr. Healy asked whether Mr. Palmieri disputed any of the audit findings.

Mr. Palmieri confirmed that he did not dispute any of the four findings.

Mr. Healy said assuming the Clean Election funds are returned by Mr. Palmieri today, he would not assess a penalty for that and suggested increasing the penalty amount on findings 1 and 2 each by \$250.

Mr. McKee said the staff requested the return of funds back in January on a few occasions and still it was not returned.

In response to a question from Mr. Healy, Mr. Wayne confirmed that mid December was the statutory deadline and Mr. Palmieri was reminded several times about the deadline. There were also several subsequent communications with Mr. Palmieri, reminding him that he was late in returning the funds.

Mr. Healy asked if the Commission's past practice was to assess a penalty for the late return and Mr. Wayne said there have been a few instances where a penalty was assessed.

Mr. Healy withdrew his suggestion not to penalize for the late return of funds.

In response to Ms. Matheson, Mr. Wayne said around January 3, 2011 Mr. Palmieri returned the amount on his final report (\$641.74) which was incorrect and not the total amount of unspent funds.

Mr. McKee moved that the Commission find Mr. Palmieri in violation of the Maine Clean Election Act with the specific violations being those listed in the audit findings #1 through #4 in the audit report and that the Commission find that Mr. Palmieri's 11-Day Pre-General and 42-Day Post-General Reports were filed late. The specific audit findings were:

- #1 – Filing a seed money campaign finance report that substantially misreported expenditures
- #2 – Making material false statements (reported expenditures) in the seed money report
- #3 – Spending MCEA funds on goods or services received prior to certification
- #4 – Failing to return all unspent campaign funds

Ms. Matheson seconded.

Mr. Duchette said he was troubled by the overlap of findings 1 and 2 because these seem to be the same thing, misreporting and making false statements.

Mr. McKee said the Creative Imaging invoice provided by Mr. Palmieri before the meeting should have been brought forward in time for review by the auditor in order to have any impact on the decision, adding the information about that invoice came out of nowhere. He said that he could not find anything to support the proposition that a payment was made on that invoice.

Mr. Wayne said that the same facts give rise to a couple of violations. Finding #1 was a failure to accurately report the seed money contributions and expenditures. He said finding #2 was that Mr. Palmieri actually made false statements in the report by stating that he made the payments when he had not.

Mr. Healy said making false material statements is troubling for him because Mr. Palmieri did not actually fill out the form and file it. His vice treasurer did.

Mr. Youngblood said these two findings are exactly the same; you cannot have one without the other and appears to be a double penalty for one violation.

Motion passed unanimously (5-0)

Mr. McKee said the penalty amount could reflect the fact that findings #1 and #2 are based on the same facts and perhaps that penalty amount could be reduced. However, he noted the staff has already recommended a significant reduction in the late reporting violations.

Mr. Healy said Mr. Palmieri was a first-time replacement candidate and these penalty amounts are quite significant under those circumstances. He said he was very bothered by the false material statements and the invoice for Creative Imaging. However, \$2,000 was a very significant penalty. He said he would allocate the fines differently. He said it would be worth the effort to go through the facts and findings and reallocate the penalties.

Mr. McKee agreed it was a stiff penalty for a replacement candidate; however, the material false statements are troubling. He said Mr. Palmieri's reluctance to return the unspent Clean Election Act funds and the lack of communication was disappointing also, especially after multiple warnings from staff. He agreed with Mr. Healy that it would be worthwhile to go through the penalty amounts and reallocate them. They are significant penalties but they are merited. The penalties for the late filed reports have been significantly reduced, partially in recognition of the penalties based on the audit. He noted the excellent work by the Commission's auditor, Mr. Dinan. He agreed that if an audit had not been done, most likely these issues would not have been discovered.

Mr. Duchette said there was a significant difference between the original financial report for the 11-Day Pre-General Report filed on October 22 and the amended report filed in December.

Mr. McKee agreed and said the difference was over \$7,000 in expenditures that were not reported in the correct report. He said that was very misleading to the public and the penalty amount was quite small in comparison to the amount underreported. He said the 42-Day Post-General Report was late as well.

Mr. Healy moved that the Commission adopt the staff recommended penalties for the four audit findings and the late campaign finance reports as laid out in Mr. Wayne's enforcement letter. Mr. McKee seconded.

Mr. Youngblood said while these are serious issues, this total amount of the penalties is excessive when compared to fines assessed in the past. Mr. Youngblood said findings #1 and #2 are repetitive and could be considered one violation. Substantial misreporting is essentially the same as making false statements.

Mr. Healy said he would agree with Mr. Youngblood if this were a clerical error; however, in this case the statements made were not clerical.

Mr. Duchette agreed with Mr. Youngblood that this was a substantial penalty. However, there were so many serious violations in this case. He said significant reductions had already been made in several penalties. He suggested a reduction of \$250 in audit finding #2, so the total of the penalties related to the audit findings would be \$1,750. He said these penalties individually taken are relatively small based on

what has been assessed in the past. However, this case presents six separate and different violations and he feels constrained to reduce the penalties any more than that for that reason.

Mr. Healy asked Mr. Duchette about reducing finding #4 and Mr. Duchette said he was most troubled by finding #4 than by finding #2. He said he found Mr. Palmieri's testimony regarding the misunderstanding about how to report unpaid debts credible. He said letting the funds sit in his campaign account for so long after being reminded by staff was very troubling.

Mr. Healy amended his motion to reduce the penalty for finding #2 to \$250. The amended motion is that the Commission adopt the staff's recommended penalties for audit findings #1, #3, and #4; assess a penalty of \$250 for audit finding #2; and adopt the staff's recommended penalties for the late filed reports. Mr. McKee seconded.

Motion passed unanimously (5-0).

Mr. McKee moved that the Commission direct the candidate to repay \$925.72 to the Maine Clean Election Fund. Mr. Duchette seconded.

Motion passed unanimously (5-0).

At this point the Commission resumed discussion of Agenda Item #3, having received the additional material provided by staff.

Agenda Item #3, Complaint against Maine Republican Party (continued from page 5)

Mr. Wayne reported that the matching funds disbursed to the Democratic candidate were mostly unused. He said that on Thursday, February 24, the staff authorized matching funds in the amount of \$2,468. He said the candidate spent just under \$400 on Monday, February 28, to print postcards but it appears she did not purchase a mailing.

Mr. McKee said the question before the Commission was whether an additional penalty should be assessed under 21-A M.R.S.A § 1127(1), in addition to the routine penalty of \$24.69. He said there was no question the report was late.

Mr. Wayne said the staff would recommend a penalty in the range of \$500 to \$750. The recommendation is somewhat more than the penalty assessed in the 2009 case because the late filing happened so close to the election and the amount of the independent expenditure was so significant in a House race. He also said the staff accepts that this was a good faith mistake on the part of the Republican Party.

Mr. McKee said he would look at this situation differently if the candidate had been present to discuss how the matter affected her campaign as well as to provide more information as to why the additional funds were not used.

Mr. Healy said he would support an additional penalty more in line with the 2009 case.

Mr. McKee said in that case the report was four days late thirteen days before the election. In this case, this timing was more serious because it happened closer to the election.

Mr. Youngblood said this candidate only had six days to spend the money, whereas in the 2009 case the candidate had thirteen days to spend the matching funds.

Mr. McKee said due to the timing and significant amount spent, he would support a higher penalty.

Mr. McKee moved that the Commission assess an additional penalty under 21-A M.R.S.A § 1127(1) in the amount of \$350. Mr. Youngblood seconded.

Motion passed unanimously (5-0).

Agenda Item #6. Request for Waiver of Late-Filing Penalty/Lobbyist James M. Cote

James M. Cote is the registered lobbyist for the Associated Builders and Contractors of Maine, and the President of the association. He filed a monthly lobbyist report two days late on March 17, 2011. The

preliminary penalty is \$100. In his letter requesting a waiver of the \$100 penalty, he explains that he completed the report on time, except for taking the step of clicking on the “File” button on the Commission’s website.

Ms. Matheson asked how long Mr. Cote had been a registered lobbyist and how long the electronic filing system had been in place.

Mr. Wayne said that he did not know exactly how long Mr. Cote had been a lobbyist, but it had been a few years. The electronic filing system has been in place for more than five years.

Mr. McKee moved that the Commission accept the staff recommendation and assess a penalty of \$100. Mr. Duchette seconded.

Motion passed unanimously (5-0).

Agenda Item #7. Proposed Statutory Change to Maine Clean Election Act

The Commission has submitted a campaign finance bill to the Maine Legislature for the 2011 session. Mr. Wayne explained that staff proposes one additional change to the bill concerning permissible MCEA expenditures which was payments for airfare. Mr. Wayne suggested an insertion in 21-A M.R.S.A. § 1125 which would say explicitly that Maine Clean Election Act funds may not be used for the personal gain or benefit of the candidate or for paid communications that primarily support or oppose a referendum or citizen initiative. He said this would put the prohibition of personal expenses in the statute and it would not just be in the guidelines.

Mr. Youngblood asked if these prohibitions would apply to seed money.

Mr. Wayne said no but they could be part of the proposal.

Mr. Duchette expressed concern over the ambiguity of the wording “personal gain of the candidate” since all funds are used for the goal to become elected. He questioned what “personal” meant in this context.

Mr. Wayne explained that the Guidelines would provide more detail as to what would constitute personal benefit or gain.

Mr. Healy asked whether the prohibition would apply to the candidate's spouse and dependent children.

Mr. Wayne said it did not specifically refer to the candidate's spouse and children but the candidate is still prohibited from spending MCEA funds on anything that is not campaign-related and that prohibition would cover that situation.

Mr. Wayne said this section could be removed from the proposed change all together and submitted at a later time.

Mr. McKee recommended keeping the section regarding prohibiting funds used for paid communication that primarily support or oppose a referendum or citizen initiative.

Mr. Healy asked whether the proposed change regarding personal gain would have changed the outcome of the recent issue regarding airfare purchased for a candidate's son to fly to Maine.

Mr. Wayne said he did not think so because there was a campaign-related purpose for that expenditure.

Mr. McKee said he would support the proposed change with the removal of the personal benefit or gain language and submit the remainder of the proposal.

Mr. Duchette agreed.

Mr. Youngblood questioned the acceptability of using seed money for personal purposes.

Mr. Wayne said a restriction could be added to seed money requirements. He said originally the seed money was used only for qualifying purposes and the Legislature took out that restriction so that candidates may use that seed money for any purpose, campaign-related or personal. He said candidates do only use it

for campaign-related purposes, but there could be a potential for a candidate to purchase something that benefits them personally.

Mr. Youngblood said a Clean Election candidate should not be able to use any revenues, including seed money, for personal gain.

Mr. Wayne said he could look into this for a future change and review at a later meeting.

Agenda Item #8. Audits of Maine Clean Election Act Campaigns

The Commission's auditor has completed three audits of 2010 Maine Clean Election Act candidates Paul Davis, Elizabeth Mitchell, and Anne Haskell. No exceptions (violations) were found.

Agenda Item #9. Meeting Schedule for 2011

The Commission may choose to meet every other month in a year in which a general election is not held.

Mr. McKee said he would support meeting every month instead of every other month for the remainder of this calendar year. The difference is that monthly meetings would result in more but shorter meeting, while meeting every other month would result in fewer but longer meetings.

Mr. Duchette said he preferred meeting more often and have shorter meetings. He asked whether a meeting could be skipped one month if there were few items.

Mr. Wayne said that was possible and suggested Monday, May 23 as the next meeting date and then he would e-mail the Commissioners with dates for June and July.

OTHER BUSINESS

Mr. Youngblood reminded the Commission that his tenure expired on April 16 but he would remain on the Commission until a replacement has been found. He also recommended some educational meetings for potential nominees as well as sitting Commissioners.

Mr. McKee recused himself from consideration of the following agenda item and left the meeting. Ms. Matheson served as Chair for discussion of agenda item #10.

Agenda Item #10. Request for Investigation by Joseph and Michele Greenier

Joseph and Michele Greenier requested that the Commission investigate the 2010 campaign of Roger Katz. At the January meeting, the Commission found that Senator Katz inadvertently overspent his campaign funds. The Greenier's believe that the campaign received an in-kind contribution in connection with a purchase of campaign signs and requested an investigation by the Commission to gather more information around the sign purchase. At the request of Senator Katz, this matter was rescheduled from the March 31, 2011 meeting.

Mr. Wayne said that he interviewed Senator Katz, Buddy Doyle, and the owners of the print shop. He explained that after this investigation, he concluded that Buddy Doyle, who was Senator Katz campaign volunteer who purchased the signs, did not provide an in-kind contribution by paying for the signs. Mr. Wayne said he could find no evidence that Mr. Doyle intended to purchase the signs with his own personal funds without getting reimbursed by the campaign. He said because Senator Katz came forward immediately when he learned he still had an outstanding invoice, the theory that Mr. Doyle paid for or provided an in-kind contribution is not supported. The staff does not recommend finding that there was an impermissible in-kind contribution for the reasons given in the staff memo.

Ms. Matheson said the staff had done a good, thorough job on the preliminary fact finding. She said that she reviewed the materials for this agenda item carefully and found it difficult to understand what the complainant was alleging as a new violation. She said the Commission considered the facts in this case and found Senator Katz in violation and assessed a penalty. She asked that any comments made today be specific to any new information with regard to this new allegation.

Joseph Greenier, concerned citizen from Stockton Springs, said he was submitting his findings under the protection of the Whistle Blowers Act and the Americans with Disability Act. He said the Ethics Commission has not provided all the records requested under the Freedom of Information Act (FOIA). He said this case goes against our religious convictions.

Mr. Duchette asked Mr. Greenier if he was making a complaint under FOIA because he had not received all information from the Ethics Commission.

Mr. Greenier said he had to come to the Ethics Commission office several times to get all the information he wanted.

Mr. Wayne said everything Mr. Greenier asked for has been provided and the staff has not withheld any information from him.

Ms. Matheson asked Mr. Greenier if there was a new allegation or violation that he could present to the Commission.

Mr. Greenier said his issue was his objection to the penalty given to Senator Katz at the January 27 meeting regarding his overspending Clean Election funds. He said this case has been judged wrongly and there were several violations within this campaign. He claimed the Modern Screenprint (MSP) invoice for signs referred to a monthly service charge but since it was not charged to the Katz campaign, it was an in-kind contribution. In addition, the invoice was not made out to Mr. Doyle. Another allegation of violation was that the report of the expenditure for signs from MSP was late because the signs were ordered in May but the campaign reported that the expenditure was made in July and, in fact, the expenditure was made in June. He said this expenditure should have been reported as an unpaid debt. He claimed that the vendor usually starts calling when an invoice has not been paid, and the campaign should have known in October about this invoice. He also expressed concern over the amount of time that had passed from the time the signs were order and the time the signs were paid for. He said the invoice was not paid until January 11, 2011 so therefore interest should have been charged as well.

Mr. Duchette, summarizing Mr. Greenier's testimony, said he understood that Mr. Greenier claimed that despite Senator Katz's testimony and the staff's investigation, some time in September the signs were ordered and the campaign knew about the outstanding debt but just did not appropriately report it in the correct report until after the election. Also, the invoice was not paid until January 11, 2011, which made it a violation of Clean Election law.

Mr. Greenier agreed with Mr. Duchette's summary and said that the campaign was in violation from the beginning because Senator Katz was his own treasurer.

Mr. Duchette asked if Mr. Greenier's complaint was because the candidate was acting as treasurer in violation of the Act or that there was false reporting based on when the signs were reported.

Mr. Greenier said they were alleging both complaints. He said he wants the Commission to reconsider the actions taken at the January 27 meeting with regard to Senator Katz's violation of the Clean Election law because this case was not investigated at that time. He said what he found during his investigation of this matter was that it was more than a lost invoice. He said the issue of the lost invoice was a symptom of a greater problem with this campaign, which was its refusal to report accurately. He said his findings submitted to the Commission were audit-like and he requested the Commission staff perform its own audit and then make a decision. He said he would like this Commission to protect the Clean Elections Act.

Mr. Healy asked if Mr. Greenier had any evidence to support his claim that Mr. Doyle's name was on the invoice.

Mr. Greenier said he did have that evidence at home.

Mr. Duchette expressed concern that Mr. Greenier was not prepared with critical evidence that he claims he has.

Mr. Healy asked Mr. Greenier if he had an invoice from Modern Screenprint that said "sold to Buddy Doyle."

Mr. Greenier said he did not have such an invoice. He also expressed concern over the travel costs associated with picking up the signs which was not reported either.

Mr. Wayne said after listening carefully to Mr. Greenier, he did not believe there was any new information to support further investigation or audit.

Senator Roger Katz, of Augusta, said he listened carefully to Mr. Greenier as well and agreed there was a violation made. He stated that he was sorry and embarrassed about what happened and self reported the mistake. He said he was not clear what Mr. Greenier was suggesting but he did not falsify any documents.

Ms. Matheson said as a result of Mr. Greenier's explanation, the Commission has a better sense of what his complaint was. Since the last time this matter was addressed, she said the staff has done further investigation by speaking with the parties involved.

Ms. Matheson moved to accept the staff recommendation that no further action be taken. Mr. Youngblood seconded.

Motion passed unanimously (4-0).

Mr. Duchette moved to adjourn and Mr. Youngblood seconded the motion.

Meeting adjourned at 12:05 p.m.

Respectfully submitted,

Jonathan Wayne, Executive Director