



Minutes of the June 25, 2014, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

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

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

The Commission considered the following items:

1. Ratification of Minutes of May 28 and June 4, 2014 Meetings

Mr. Healy moved to accept the minutes of the June 4, 2014 meeting and moved to table the ratification of the May 28, 2014 minutes for a future meeting. Ms. Matheson seconded both motions. Both motions passed (5-0).

2. Consideration of Draft Determination/National Organization for Marriage

Mr. Wayne explained that at the Commission's meeting on May 28, 2014, the staff presented its investigative report regarding the complaint against the National Organization for Marriage (NOM) and the Commission heard from John Eastman, Esq., Chairman of the Board of NOM and NOM's counsel, and Brian Brown, NOM's Executive Director. The Commission reached conclusions of law and assessed civil penalties recommended by the staff. Based on the Commission's action at the May 28th meeting, the staff drafted a written determination which is being presented for the Commission's approval today. Mr. Wayne noted a few stylistic changes that needed to be made with regard to formatting. He specifically noted changes to the paragraphs pertaining to the NOM e-mails and the funds received from those.

Mr. McKee said from his perspective, the draft determination is consistent with the Commission's actions at the May meeting.

Mr. Healy moved to accept the staff's draft determination. Mr. Duchette seconded.

Ms. Matheson noted that this would include any stylistic changes made.

Ms. Gardiner explained the changes involved punctuation and spacing. The only change of substance was the reference on page 4 to NOM being given 30 days to respond to the staff's investigative report when NOM actually had 27 days in which to respond. Mr. Healy recommended making the change right now. Also, there was a page number cross reference on page 26 that needed to be changed.

With these changes incorporated, the motion passed unanimously (5-0).

Ms. Gardiner asked Ms. Amero if she was comfortable participating in the vote on the draft since she was not in attendance at the May meeting. Ms. Amero said she had read through all the materials and is comfortable accepting the draft.

Mr. McKee explained there were two other issues that needed to be addressed which had been raised by NOM within the last two days; those being a request for waiver or reduction of the penalty and a stay pending resolution of an appeal to Superior Court.

Mr. Wayne explained that staff's and counsel's opinion is that it is discretionary whether the Commission deals with the request for penalty waiver. He said on April 9, NOM received notice that the Commission staff would be recommending findings of violation and specific penalties, and the notice gave NOM an opportunity to respond by a deadline before the May Commission meeting. NOM took the 27 days to respond in writing but only addressed whether there was a violation. NOM did not address the issue of the assessment of penalties or request a waiver at that time. Also, at the May meeting, neither the NOM Chair nor its Executive Director addressed the penalties issue or the waiver. Mr. Wayne noted that this waiver request was coming before the Commission now after the Commission had already made an oral decision about the penalties.

Mr. Healy asked Mr. Wayne if NOM had waived its right to request a waiver since it was not brought up in writing before now or at the May meeting.

Mr. Duchette said NOM had an opportunity to take a position on the potential penalty and chose to say nothing, so he was not inclined to grant a waiver at this time.

Mr. McKee asked if Mr. Duchette's position was based solely on the lateness of the waiver request.

Mr. Duchette said the penalties were reviewed, line by line, at the May meeting and NOM did not make an argument against the penalties at that time.

Mr. Duchette moved to deny NOM's request for waiver or reduction of penalty based on the late filing of the request because there was an opportunity at the May 28 meeting to request a waiver. Ms. Matheson seconded.

Motion passed unanimously. (5-0)

Mr. McKee said with regard to the stay, NOM must first make the request to the Commission; however if the Commission denies the request, NOM can then go to the Superior Court.

Ms. Gardiner agreed with Mr. McKee that procedurally NOM has requested a stay of the order from the Commission before going to the Superior Court. Under the Commission's order, NOM has 30 days to file a report with the Commission. She said NOM also could file an appeal and seek a stay within that time.

Mr. McKee said the main issue was the disclosure of the names of NOM's donors. Although this matter has gone on for a very long time, he is concerned because once the bell has been rung (releasing the names of the donors), it cannot be un-rung. Mr. McKee said that he did not accept NOM's argument that the donors would suffer actual harm if their names were released. He said he believes the Commission made the correct decision. However, he was willing to give NOM the benefit of what minimal doubt there may be.

Mr. Healy said he would be in favor of a very limited stay, only for the purpose of maintaining the confidentiality of the identity of the donors until litigation is complete. He said it has been years since the referendum and he believed releasing the names at this point would not make much difference.

Ms. Gardiner explained, in response to Mr. McKee, that there are essentially two parts to the Commission's order. One was the penalty portion; the second part of the order requires NOM to register and file a consolidated report for 2009. She asked if Mr. Healy's suggestion was that the stay would only affect the filing of the consolidated report. She said that the Commission could choose to defer, rather than stay, that portion of the order until the Superior Court rules on NOM's appeal.

Mr. Healy said he did not want to grant a stay for the fine or the registration. He said he would like to see the Commission defer the disclosure of the donors until the litigation is over.

Mr. Duchette suggested that NOM could just not provide the names to the Commission staff at this point. Ms. Gardiner said the names have already been produced to the Commission and kept confidential. She suggested that perhaps the Commission could allow NOM to redact the identifying information of the contributors when NOM files the consolidated report.

Mr. McKee said that would make sense and this would cover the concerns of NOM.

Ms. Gardiner said the Commission might be able to accomplish that goal without making the specific findings that it would have to make in order to grant a stay. She summarized her understanding that the Commission's intention was to not stay the obligation to pay the penalty or to register and file reports but that NOM would be allowed to file the report with donors names redacted in some form.

Ms. Matheson said if the Commission denies the stay now, NOM's next step would be to proceed to the court.

Mr. Healy asked if amending the decision might be a more efficient process to take and let NOM file the report without the donor identities until the litigation is over.

Mr. McKee disagreed with that option because that would mean another order would need to be drafted.

Mr. Duchette asked if an appeal would automatically trigger a stay and Ms. Gardiner said no. She said the Administrative Procedure Act states that an appeal does not automatically trigger a stay which is why NOM is asking the Commission to grant a stay.

Mr. McKee asked Ms. Gardiner what would be the best way to craft a motion regarding the stay request given the foregoing discussion.

Ms. Gardiner said she would like to give more thought to the possible approach that they had been discussing and that she would attempt to craft a proposed motion for the Commission's consideration later in the meeting.

Mr. Healy moved to table the request for a stay until later in the meeting. Mr. Duchette seconded.

Motion passed unanimously (5-0).

3. Request for Waiver of Late-Filing Penalty – Maine Conservation Voters Action Fund PAC

Mr. Wayne explained that the Maine Conservation Voters Action Fund PAC was late in filing 24-hour reports of one large contribution received and one large expenditure made during the last 13 days before the June 10, 2014 primary election. Although the transactions occurred during this time period, the contribution and expenditure were not intended to influence the primary election. Based on the formula in statute, the preliminary penalties for the two late reports total \$32,500. Mr. Wayne stated that the penalty seems excessive compared to the harm to the public.

Mr. McKee asked if the PAC had responded to the significant reduction in the penalty and Mr. Wayne said he had not heard from them.

Michael Mahoney, Esq., representing the Maine Conservation Voters Action Fund, said Maureen Drouin and Ralph Pope who are officers with the PAC were available to answer any questions. He said they have no problem with the staff recommendation and understand the seriousness of the issue as well as know the rationale behind the importance of reporting. He said there was no harm to the public since these transactions did not relate to the primary election.

Mr. Healy said he agrees with the theory behind the reduction; however, this was a pretty large reduction. He said the Commission is confronted with these requests all the time and usually is generous with their decisions. He asked Mr. Mahoney to justify this very large reduction from \$32,500 to \$1,000.

Mr. Mahoney said the formula used to obtain the penalties uses the amount of the transaction that was not reported. These two transactions were very large, one was \$250,000 and the other \$50,000 but the number of days was not very much because the error was self-reported by the PAC upon discovery. This PAC has always been very conscientious and maintains a high level of communication with the Commission staff regarding compliance and this is also the PAC's first violation he said, so a reduction seems justifiable in this instance.

Mr. Duchette asked if the reports were filed before the primary election. Mr. Mahoney confirmed that they were.

Mr. Healy said the contribution of \$50,000 was large and asked what it was intended for. Mr. Mahoney explained that it was not intended to be spent immediately or earmarked for the primary, it was just intended to sit in the account.

Mr. McKee said the statute does not consider whether the funds are actually being used to influence the primary or general election. He said that while he shared Mr. Healy's concerns regarding the size of the reduction, he said he could see no harm to the public by the late filing.

Mr. McKee moved to reduce the penalties to a total of \$1,000 for the two late reports. Ms. Amero seconded.

Mr. Healy agreed that there was no harm done to the public but he said many people frequently file reports late and request waivers for reduction in penalties and the Commission usually reduces by a minimal amount. He said this is a sophisticated PAC.

Mr. McKee said the comments about the PAC being fully cooperative and that they self-reported the late filing helped him make his decision.

Motion passed unanimously. (5-0)

4. Request for Waiver of Late-Filing Penalty – Lobbyist Newell Augur

Mr. Wayne said Newell Augur is a lobbyist who registered on behalf of four clients on March 11, 2014. He was one day late filing the monthly reports for March 2014 because an administrative assistant mistakenly believed that no monthly reports were due until Mr. Augur had lobbied eight hours in a calendar month. The preliminary penalties for the four late reports total \$200. Mr. Augur requests a waiver of the preliminary penalties. Mr. Wayne said lobbyists are always told when registering that they are required to file monthly reports with the Commission regardless of the number of hours spent lobbying.

Ms. Matheson moved to accept the staff recommendation and assess penalties totaling \$200. Mr. Duchette seconded.

Motion passed unanimously (5-0).

5. Request for Waiver of Finding of Late Filing – National Association of Realtors Fund PAC

Mr. Wayne said the National Association of Realtors Fund PAC was three days late in filing a campaign finance report due Friday, May 30, 2014. The preliminary penalty was zero, because the PAC engaged in no financial activity during the report period. The PAC requests a waiver of the staff's preliminary finding that the report was late, because the PAC failed to press the file button on the Commission's e-filing website, has a record of filing reports on time, and engaged in no financial activity during the period.

Mr. Healy moved to accept the staff recommendation and find that the report was filed late. Ms. Amero seconded.

In response to Ms. Matheson, Mr. Wayne confirmed that the PAC had to be reminded to file the report after the deadline date through a reminder email from Commission staff.

Motion passed unanimously (5-0).

6. Request for Waiver of Finding of Late Filing – Mark Holbrook

Mr. Wayne said Mark Holbrook is a candidate for the Maine House of Representatives who was three days late filing a campaign finance report due Friday, May 30, 2014. On May 30, he used the Commission's e-filing system to enter the details of one expenditure, but did not file the report. The information became available to the public three days later when he filed the report after being contacted by the Commission staff. The preliminary penalty is automatically waived because it is less than \$10. Mr. Holbrook requests a waiver of the staff's preliminary finding that the report was late, because he thought he had fulfilled his filing obligations by entering the expenditure. Mr. Wayne said granting a waiver would be inconsistent with past practice.

Mr. Duchette moved to accept the staff recommendation and find that the report was filed late. Ms. Amero seconded.

Motion passed unanimously (5-0).

7. Complaint by Steve Woods against Pam Fenrich, the Maine Democratic Party, and Others

Mr. Wayne explained that Steve Woods was a candidate for the Democratic nomination for Maine State Senate in District 25. He ran against Catherine Breen, who won the Democratic nomination in the June 10, 2014 primary election. Mr. Woods contends that his campaign was disadvantaged by a series of actions by a Democratic Party official, Pam Fenrich, who is the chair of the Falmouth Town Democratic Committee and vice chair of the Maine Democratic Party (MDP), that were undertaken to assist Cathy Breen in winning the Democratic nomination. Mr. Woods contends that these actions had a material impact on his campaign.

Mr. Healy asked if the town committee email list was used in the endorsement mailing. Mr. Wayne said the chair, Ms. Fenrich stated the email list is created and maintained by the secretary for the Falmouth Town Democratic Committee and the list consists of individuals who have signed up at various Democratic functions to receive email notifications from the committee.

Mr. Wayne explained that Mr. Woods went to the Democratic party leadership back in March for support and to request Ms. Fenrich remain neutral during the campaign. Mr. Wayne expressed the staff's concerns about the Commission's jurisdiction over some of Mr. Wood's concerns.

Mr. Healy explained, in response to Mr. McKee's question, that he believed there may be a couple areas that fall within the Commission's jurisdiction. Specifically, he wondered if perhaps using the committee's email list to send out endorsement letters was a contribution to Ms. Breen's campaign by the Falmouth Town Democratic Committee and also whether the email complied with statute (21-A M.R.S. § 1014) regarding distributions of political statements.

Mr. McKee said a good portion of the request falls outside the Commission's jurisdiction and encouraged discussion to fall within any area that may be within the jurisdiction.

Mr. Stephen Woods began by saying he would just highlight a few areas of his request. He specified various documents that he submitted to the Commission which he would be referencing in his remarks.

Ms. Kate Knox, counsel for the Maine Democratic Party, said a request was made to Commission staff that some of the documents submitted by Mr. Woods be kept confidential and asked for confirmation of that.

Mr. Wayne said some documents and emails were not disclosed to the public which is allowed by statute, because there may be certain sensitive political campaign information.

Mr. McKee questioned how the discussion would evolve if certain things could not be discussed in public.

Mr. Wood said these emails were the core of why he was submitting his request for investigation. He said he waives any confidentiality rights in this setting. He said the Maine Democratic Party (MDP) has not been transparent or fair or ethical in his view. He said he is revealing these documents in support of his request for the Commission to make a determination if there is enough evidence for further investigation. He said he was comfortable with the Commission and staff having the documents in order to do so and has no punitive desire to reveal sensitive information that will upset his friends at the Maine Democratic Party.

Mr. Healy asked if the MDP was requesting all 36 pages submitted by Mr. Wood be considered confidential.

Ms. Gardiner explained the definition of confidential investigative working papers and said the MDP needs to clarify which pages within the documents they considered confidential. She said the Commission could go into executive session to discuss a confidential document, if necessary. That is permissible under the Maine Freedom of Access Law. Since the Commission first needs to decide which issues fall within its jurisdiction, she said it may be possible to have a discussion about the jurisdictional issue without getting into the substance of the confidential documents.

Mr. McKee said Mr. Woods could decide whether to distribute the documents himself, but the Commission's obligation would be to keep them confidential.

Mr. Healy suggested going into executive session to determine what pages are confidential and whether further investigation is necessary.

Mr. Woods stated he would like the whole proceeding to be public and transparent because a core issue to this matter pertains to how the political system operates.

Mr. Duchette suggested Ms. Knox identify the pages the MDP has concerns with.

Mr. McKee stated that if a large number of these issues do not relate to the Commission's jurisdiction, discussion does not need to take place over those portions and suggested discussing only areas within the jurisdiction.

Discussion with regard to jurisdiction and confidentiality of the documents submitted.

Ms. Gardiner said there were five documents that MDP asserts fall within the sensitive political or campaign information (Documents labeled 1A, 1B, 1C, 2A, and 2B).

The Commission took a five minute break to review the documents.

Mr. McKee said there was enough information presented to decide which issues fall within the Commission's jurisdiction and he believes there is very little that would. He suggested focusing only on areas the Commission could make a determination as to what may be investigable.

Mr. McKee moved to address those issues that are within the Commission's jurisdiction as presented by the documents provided and limit the discussion to those items that may be within the Commission's jurisdiction.

Mr. Healy said he would like to hear from Mr. Woods as to what he thinks is within the Commission's jurisdiction and why.

Mr. Woods stated a review of his materials would take 10 minutes and the Commission would find that this is significant because it involves a political party, the highest officer in the state's Legislature, and at least two areas where laws were broken. He said the Commission may differ interpreting that jurisdictional issue but he would like the opportunity to present his facts. He said to be fair, he would like the Commission to hear him out and not make a decision without hearing his side of the facts.

Mr. Woods explained that he broke the documents down into areas that address the jurisdictional requirements and campaign finance issues. He said he believes the Breen campaign received something of value from the town committee's endorsement email as well as an email by Ms. Fenrich that was a political ad in his opinion. He said email is now recognized to have the same value as an advertisement in print, on the radio, or television. He said the Secretary of State's Office is looking into several alleged irregularities and activity by the Breen campaign on election day at the polls. He said that Ms. Breen's family members and Ms. Fenrich visited a number of polling places on primary election day to have interactions with voters as they were entering the polling. He said that the purpose of these interactions was to influence voters which is a Class E crime under Maine Election Law. He said in his view these actions influenced the election. He said that where there is influence, there is compensation, even though in this instance it may not be monetary compensation but in the form of favors.

Mr. Healy asked where the Commission has the authority to investigate the matter at the polling. Mr. Wood said the Commission does not have jurisdiction over investigating that particular issue but it does have authority to investigate when candidates receive goods and services. Ms. Fenrich was providing an advertising benefit and a financial benefit to Ms. Breen by accompanying Ms. Breen at the polls.

Mr. Healy said the Commission does not have the authority to investigate the polling area. Mr. Wood explained that a value was given, a financial benefit to the candidate and the Commission does have jurisdiction over contributions to a candidate.

Mr. Duchette asked if Mr. Woods had won the primary and received support in the same way, would he consider the support he received as financial contributions to his campaign. Mr. Woods stated that a party should not be precluded from making an endorsement of a candidate nor should an individual lose their right to endorse a candidate. But, when it reaches a level of concerted effort or organized intent, it is no longer organic but that organization becomes a PAC and requires reporting and transparency. The whole situation was organized and contrived by the Party.

Mr. Woods also addressed the matter of undue influence by Ms. Fenrich because she signed two petition forms for Ms. Breen's nomination which he believed was not legal and because the purpose in doing so was to influence others to sign the petitions for Ms. Breen. He also referenced various Democratic Party events at which he believes Ms. Fenrich used her position in such a way that she was providing Ms. Breen with financial benefit. He stressed the importance of investigating the email that was sent out by the town committee endorsing Ms. Breen and the meeting held by the committee where the endorsement was discussed. Because the email was from Ms. Fenrich, Mr. Woods believes it had value and should have been reported as a contribution. His view is that the meeting was a scam and that the committee was not authorized to take the action it did in endorsing Ms. Breen. He also referred to a printed list of alleged endorsements from community members for Ms. Breen. He said this constitutes value given to Ms. Breen.

Mr. Woods said the party at the highest level assured him verbally and in writing that Ms. Fenrich would remain neutral and would not have any involvement in the primary race. He said he believes Ms. Fenrich breached the agreement and acted unethically. He said if the Commission decides to go forward with an investigation of these irregularities, there will be more evidence in support of his request brought forward.

Mr. Healy asked if the value of the email sent out by the town committee was listed on any reports filed by the Breen campaign or the town committee. Mr. Woods said it was not as of the last time he looked online.

Mr. Healy also asked if the conversations with Legislative leaders specifically told Mr. Woods that they had discussed the matter with Ms. Fenrich and she agreed to “go dark.” Mr. Woods stated he was told she agreed to stay out of the race and she participated in the discussion. Mr. Woods said there are many emails to support that leadership knew there was a problem and knew her actions were not acceptable.

Ms. Kate Knox, counsel for the Maine Democratic Party (MDP), speaking to the jurisdictional issue said the Party believes some facts are being created out of whole cloth by Mr. Woods. She said the Party strenuously disagrees with the facts as Mr. Woods has laid them out. She said she does not represent Pam Fenrich or the Falmouth Democrats so her information comes from those parties. The only jurisdictional issue in her view involves the email Ms. Fenrich sent and the email address list she used. She said the Commission’s view should be focused on whether there was a contribution or coordination between the Breen campaign and the Falmouth Democratic Committee because that is the only piece that would fall under the Commission’s jurisdiction. She said polling place issues are outside the Commission’s jurisdiction. She said there has been a long standing difficult relationship between the Party and Mr. Woods but the Commission does not have jurisdiction to rule on those disagreements. She respectfully requested the Commission narrow its analysis to the issue of whether there was in fact a contribution to the Breen campaign. She said based on what Ms. Fenrich supplied, there was not. She said most local committees maintain their own internal email lists for meetings, etc. She said Mr. Woods has not provided any evidence that supports the email was coordinated between the Party and Ms. Breen. She said there was no expenditure since the committee spent no funds on sending out the email. Pam Fenrich sent an email from her own personal email account after she rewrote the email from the town committee and although that is personally distasteful to Mr. Woods, there is no expenditure and no requirement to report it. Ms. Knox said Mr. Woods has not provided enough evidence to justify an investigation or evidence that there was any coordination or expenditure. She said the Party does keep a voter database but that was not used for the email sent out by the Falmouth Democrats. She said in summary, she would like the Commission to make a formal decision about the five pages in Mr. Woods’ submission because of the difficult relationship

between Mr. Woods and the Party. She said there are sensitive political discussions and structure addressed in them and should be protected under 21-A M.R.S. § 1003 (3-A).

Mr. McKee questioned the need to consider whether any documents are confidential if they do not come under the Commission's jurisdiction.

Ms. Knox said she would defer to the Commission's determination whether they need to be protected.

Mr. Healy asked when, in Ms. Knox's view, a town committee would be considered a political action committee.

Ms. Knox said that party committees are bound by the same standard but many of the things described by Mr. Woods fall under different categories. His argument that certain activities create a value that must be reported is not based on anything in the statute. Town committees and individual members of the committees are allowed to volunteer and to endorse candidates. She said nothing Mr. Woods described constitutes election activity with an associated expenditure. She questioned how the Commission could place value on these types of activities. There has to be an expenditure that monetizes the activity in order for it to be something that is required to be reported to the Commission.

Mr. Healy asked if an email endorsing a candidate had value. Ms. Knox said that would not be considered as having value under the statutes. It may be important but it is not something that has a value. She said her concept of value based on her years of experience working with campaign finance law is very different from Mr. Woods' concept of value. She said the Falmouth Democratic Committee was entitled to make an endorsement of a candidate or referendum without placing value on it if nothing has been paid out to make that endorsement. She said if money was used to make an endorsement, then that has value and the Commission has jurisdiction over that activity.

In response to Mr. Healy, Ms. Knox asked how the Commission would begin to calculate the value of an endorsement. Mr. Healy said the endorsement may not have value but the list used to circulate the endorsement could have value. Ms. Knox explained there would need to be a cost associated with the mailing list and in this case there was no cost.

Mr. McKee suggested Ms. Knox was claiming within the constraints of the statute there was no value and Ms. Knox agreed.

Mr. Duchette asked when the value of volunteering became something of value. Ms. Knox said if no one was getting paid to support the candidate then that would not have value unless a volunteer was getting reimbursed for an activity like mileage for example.

Mr. Woods stated he believed the email list did have value and said the Maine Democratic Party sells lists to candidates during every election so there is value.

Mr. McKee summarized that the Commission first should decide what falls under its jurisdiction and secondly whether there is probable cause for further investigation by the Commission.

Ms. Matheson said she agreed with Mr. Healy the only area that could be considered by the Commission was the emails that were sent out by the committee. She said the other issues may fall within a general definition of ethics, they are not issues that fall within the statute over which this Commission has jurisdiction.

Mr. Healy said the only basis for an investigation is whether the email that the Falmouth Town Democratic Committee sent out was a contribution to the Breen campaign. The email list is something that has value. He said also that if a town committee takes sides and influences voters in a primary election, at some point they could be considered a political action committee because of these actions. He said he did not think the Commission had jurisdiction over the issues regarding activity at the polling places and over any agreement with legislative leadership.

Mr. Healy moved that the Commission determine that the sole issue over which it has jurisdiction is whether the email list and any other activities of the Falmouth Town Democratic Committee may have constituted a contribution to the Breen campaign. Mr. Duchette seconded.

Motion passed unanimously (5-0).

In response to Mr. McKee, Mr. Wayne explained that there is an exception for volunteerism in statute. He explained that a common activity was urging support for a candidate in several ways. He said all these activities have great value to the candidate; however, they are simply people expressing their own views. The Legislature exempted these types of activities that could not be considered a contribution since a value could not be placed on someone's volunteer time.

Mr. Duchette asked if volunteerism as defined in statute was different for individuals or organized groups.

Mr. Wayne said there are some assets that have value that parties are allowed to give to a candidate without being treated as a contribution or expenditure. These exempt assets include party platforms and lists of registered voters and voter identification information created or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party. However, in this case, the Town Committee did not provide any list to the candidate. The Town Committee used an existing list to exercise their First Amendment rights to endorse a candidate. Mr. Wayne explained that Mr. Woods asserts that he was not given the same access to this resource by the Town Committee, but that disagreement between Mr. Woods and the Town Committee does not fall under the Commission's jurisdiction. Mr. Wayne cautioned the Commission not to get caught up in determining what has value from an endorsement and would require reporting. He said endorsements may have some meaning and may influence voters but he does not think that they are contributions to which a dollar value can be attributed.

Mr. Healy asked Mr. Wayne whether he had considered 21-A M.R.S. § 1014, regarding the disclaimer statement on campaign communications, and whether it relates to the Town Committee's email. Mr. Wayne said this statute did not apply since there was no expenditure associated with creating or sending the email. Mr. Healy said the email list has value and that makes a contribution in his view. Mr. Wayne explained if something of value was given to a candidate that did not have a monetary amount associated with it, it would be an in kind contribution that would need to be reported; however, in this case, nothing was actually given to a candidate.

Mr. McKee moved to find there are insufficient grounds for believing a violation may have occurred and therefore the Commission should not commence an investigation. Ms. Matheson seconded.

Ms. Amero said that she believed that there was enough information provided that would support an investigation into the Falmouth Town Democratic Committee.

Motion failed (2-3). Mr. Duchette, Mr. Healy and Ms. Amero opposed.

Mr. Healy moved to investigate the activities of the Falmouth Town Democratic Committee as to whether any activities during the June primary constituted a contribution to the Breen campaign by way of an email or any other activity that may come to the attention of the investigators. Mr. Duchette seconded.

Motion passed (3-2). Mr. McKee and Ms. Matheson opposed.

Mr. Duchette moved to determine that five documents submitted by the Woods campaign remain confidential for the remainder of the investigation. Mr. Healy seconded.

Mr. Healy stated he believes there was a factual question as to who the documents belong to and in any case, neither party was bound by the Commission's determination with regard to confidentiality of the documents.

Motion passed unanimously (5-0).

8. Complaint by Pamela Prodan against Joanne Karkos, Candidate for Treasurer of Franklin County

Mr. Wayne explained that Joanne Karkos was a write-in candidate in the Republican primary election for County Treasurer of Franklin County. On May 7, 2014, she filed a statement that she would not incur any obligations and make expenditures to promote her candidacy. Subsequently, Ms. Karkos purchased campaign signs and two newspaper advertisements. Ms. Karkos has explained that she did not understand that the exemption statement applied to payments from her personal funds. Her Democratic opponent has filed a complaint requesting an investigation.

Ms. Joanne Karkos explained this was an error due to ignorance and when she learned of her mistake she immediately corrected the problem. She said going forward she will be extra careful and thorough with her reporting.

Mr. Duchette moved to find Ms. Karkos in violation of 21-A M.R.S.A § 1017(7-A)(B) and assess no penalty. Ms. Amero seconded.

Motion passed unanimously (5-0).

Continuation of Agenda Item #2

Ms. Gardiner said that upon giving the matter further thought, she did not believe the Commission would have the authority to allow NOM to file a redacted consolidated campaign finance report. The ballot question committee statute requires disclosure of donors, and the Commission could not waive that requirement. Ms. Gardiner suggested that an alternative would be for the Commission to stay its directive requiring NOM to file the consolidated BQC report until NOM has had an opportunity to obtain a stay from the Superior Court.

Mr. Healy moved to stay the directive in paragraph 1 of the Commission's order adopted today that NOM file a consolidated campaign finance report for 2009 until NOM has had an opportunity to obtain a stay from the Superior Court pending resolution of the appeal of the Commission's determination and to deny NOM's application for a stay in all other respects. Mr. Duchette seconded.

Motion passed unanimously (5-0).

Executive Session

Pursuant to Title 1 of the Maine Statutes, section 405(4), Mr. McKee moved to go into executive session pursuant to Title 1, section 405(6)(E) at 11:35 a.m. to consult with the Commission's counsel concerning contemplated litigation. Mr. Duchette seconded.

Motion approved (5-0).

At 11:45 a.m. Mr. McKee moved to come out of executive session. Mr. Duchette seconded. Motion approved (5-0).

Meeting adjourned at 11:45 a.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director