



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

Approved: October 1, 2015

Minutes of the July 23, 2015, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: Walter McKee, Esq., Chair; Margaret E. Matheson, Esq.; André G. Duchette, Esq.;
Michael T. Healy, Esq.; Hon. Richard A. Nass

Staff: Jonathan Wayne, Executive Director

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

The Commission considered the following items:

1. Ratification of Minutes of May 28, 2015 Meeting

Mr. Nass moved to accept the minutes as written. Ms. Matheson seconded. The motion passed (5-0).

2. Audit Report and Recommended Finding of Violation – Lisa H. Willey

Mr. Wayne reported that, based on the Commission's directions at the last meeting, he had mailed two letters to Ms. Willey inviting her to attend the next Commission meeting to further discuss the errors in her campaign reports. Ms. Willey did acknowledge receipt of the first letter but made no commitment to attend today's meeting. She sent an email in response to the second letter, stating that she could not attend the meeting due to a family matter. In response to questions from the Commissioners about why there was not a recommendation for further assessment of penalties, Mr. Wayne stated that he believed the Commission had already made their point about the importance of filing complete, timely and accurate reports in their prior assessment of a penalty. However, he said that the Commission could assess an additional penalty based on a new finding of violation. Concerns were expressed that this particular candidate does not seem to comprehend the seriousness of these issues regarding her campaign finance reporting. A question was raised regarding whether the candidate returned the correct amount of unspent public campaign funds. Mr. Wayne stated that while the reports were factually incorrect, an audit of her campaign expenditures verified that she did make the expenditures listed in her amended reports and the candidate returned the correct amount of

money. Mr. Healy stated that the false information that Ms. Willey entered into the report did not get there by accident. A question was raised about whether any consideration should be given to the fact that Ms. Willey has paid her fine. In making its recommendation, Mr. Wayne stated that staff did take this into consideration.

Ms. Matheson made a motion that the Commission find that Ms. Willey had violated 21-A M.R.S.A. §1004-A (4). Mr. Nass seconded. After further discussion of this issue, it was noted that it was part of the public record that Ms. Willey had made material false statements in her reporting which would be a violation of subsection 5, not subsection 4. Ms. Matheson withdrew her motion.

Ms. Matheson made a motion that the Commission find that Ms. Willey had violated 21-A M.R.S.A. §1004-A (5), which was seconded by Mr. Nass. Motion passed (5-0).

Ms. Matheson made a motion that the Commission impose a \$200.00 penalty against Ms. Willey. Mr. Duchette seconded this motion. Motion passed (5-0).

3. Request for Waiver of Late-Filing Penalties – Maine Truck PAC

Mr. Wayne reported that the Maine Truck PAC had timely filed its campaign finance reports but due to a lack of communication between the association's chief financial officer and the PAC treasurer, contributions in the amount of \$15,520.00 received at their annual fundraiser were not appropriately recorded in the filed campaign finance reports. Brian Parke, treasurer for Maine Truck PAC discovered this discrepancy and arranged to meet with Commission staff to discuss and correct the error. Based on the fact that the error was not discovered or reported for over a year, the penalty is sizeable. However, based on consideration of similar late-filings by other PACs, the Commission staff recommends a significant reduction of the penalty to \$1,500.

Mr. Parke addressed the Commission and apologized for this error, took responsibility for the miscommunication and stated that the PAC has taken steps to ensure this type of mistake will not be made again. The contributions were never entered into the PAC checkbook because he had not followed up with the chief finance officer after their annual golf fundraiser. Furthermore, because the funds were not reflected in the PAC checkbook, the funds were not used for campaign purposes. The discrepancy was not discovered until the PAC began the process for

paperless banking and realized it had not balanced its checkbook against its bank statements. Mr. Parke clarified that the PAC does not have a CFO, the association has a CFO, but it was his responsibility, as the PAC treasurer, to obtain the information about the contributions received by the association to include in the PAC's report.

Mr. Nass made a motion to find three violations for late-filed reports and assess a combined penalty of \$1,500. Mr. Healy seconded the motion. Motion passed (5-0).

4. Request for Waiver of Late-Filing Penalty – Michael Coleman

Mr. Wayne reported that Mr. Coleman registered as a lobbyist for the Maine Premium Cigar Association on April 15th, and received an email with a temporary PIN, instructing him to log-in to the Commission's e-filing website and create a permanent PIN. Mr. Coleman did not log-in until he needed to file his first report which was due on May 15th; however, his temporary PIN had expired by that time. He did not file his report until three days later.

Michael Coleman stated Mr. Wayne's representation of this matter was accurate. He stated that he had reviewed the statute and felt that an argument could be made that the penalty was disproportionate to the level of experience of the lobbyist and that his actions were reasonable under the circumstances. He cited 3 M.R.S.A. §319 (c) in his defense in this matter and requested that the Commission consider a full waiver of the penalty and, if possible, a finding of no violation.

A question was raised about the 30 day expiration of the temporary PIN. Mr. Wayne clarified that the 30 day timeframe was a design in the e-filing system and was not statutorily binding.

Mr. Coleman was asked about the steps he took to correct this problem. Mr. Coleman stated that, unfortunately, this occurred on a Friday evening after business hours. He was unable to obtain a new temporary PIN until the following Monday, which was the first opportunity he had to file the report. Mr. Coleman stated that while he has been a candidate before, his filings were handled by his treasurer and this was his first time filing as a lobbyist.

Mr. Nass made a motion to find a violation but assess no penalty. Mr. Duchette seconded this motion. Motion passed (5-0).

5. Audit Report and Recommended Penalty – Alice D. Elliott

Mr. Wayne reported that Ms. Elliott was a candidate for the House and her campaign was randomly selected for audit. The audit found that she paid \$52.91 for photocopying with personal funds and did not reimburse herself from her campaign funds. Ms. Elliott did not deny the error but stated that she had tried very hard to follow all the rules and did not believe she should be penalized for this oversight. In response to several questions regarding Ms. Elliott's campaign finances, Mr. Wayne stated that while she was not out of campaign funds at the time of this expenditure, she ended her campaign with \$.49 remaining and this error causes an over expenditure of funds.

Mr. Duchette made a motion to find a violation and assess a penalty of \$50.00 penalty. Mr. Nass seconded the motion. Motion passed (5-0).

6. Audit Report and Recommended Finding of Violation – Asher D. Platts

Mr. Wayne reported that Mr. Platts was a candidate for the Senate and his campaign was randomly selected for audit. Initially Mr. Platts was missing several receipts but ultimately was able to provide all but one receipt. Mr. Wayne stated that staff is not recommending a penalty because the expenditure is partially documented by a cancelled check.

Mr. Platts admitted that he lost the receipt but stated he has run for office in the past and did have all records from that campaign. He further stated that he did his best to obtain and keep all records during the campaign.

The issue of acceptable records for audit purposes was discussed and Mr. Wayne explained that the auditor is primarily looking for two documents to verify expenditures: an invoice or receipt from the vendor and proof of payment, such as a cancelled check.

Ms. Matheson moved to find a violation but assess no penalty. Mr. Duchette seconded the motion. Motion passed (5-0).

7. Update on Audits of 2014 Maine Clean Election Act Candidates &

8. Summary Report of Audits

Mr. Wayne stated that Vincent Dinan, the independent auditor the Commission contracted with for the 2014 elections, had suggested items 7 and 8 be combined. Mr. Dinan stated that in 2014,

37 House and 13 Senate campaigns were randomly selected for audit. In addition, two special purpose audits were conducted at the request of staff due to the number of problems in the campaigns of Lisa Willey and Byron Watson. The results of the audit were encouraging with 95% full compliance. Mr. Dinan noted that this level of compliance was a result of a lot of follow-up work by Commission staff. Ultimately the audit identified six deficiency findings. He noted that in 2006 the compliance rate was around 60-65% and now is around 95% and credited this to the hard work of Mr. Wayne and Commission staff. Mr. Dinan recommended the following changes:

- Amend the law to require a campaign checking account;
- Limit cash payments to \$50.00 or less; and
- Amend law regarding payments to independent contractor/consultants such that the documentation requirement start at a payment of more than \$50 and that the independent contractor/consultant be required to sign off on provided services.

Mr. Dinan was asked about the frequency and amount of money that is disbursed to family members as part of the campaign. Mr. Dinan stated that there is not a lot of money used for this purpose but noted that family members who provide services to a campaign are frequently in the business of the service provided.

A question was raised why the law would need to be amended to require checking accounts instead of promulgating a rule. Mr. Wayne agreed to follow-up with Ms. Gardiner on this issue.

In response to a question about how cash payments are reimbursed or recorded, Mr. Dinan responded that the problem is that candidates do not always get receipts for services paid for with cash and they do not appropriately record these transactions. In response to several questions regarding the definition of a checking account, Mr. Wayne suggested that, if this issue is addressed by a rule, the rule could set the standards for definition and appropriate documentation. A concern was expressed that some candidates seem confused by the banking system and it was suggested that if banks were more helpful, this would not be such a problem. Mr. Dinan stated that he has not found that the banks are the problem but that candidates are not necessarily asking the right questions.

Mr. Dinan was asked about how to define or capture the \$50 payments to independent contractor/consultant and it was pointed out that candidates could do a lot of \$50 or less expenditures. Mr. Dinan responded that these expenditures would be stand-alone expenditures. In response to questions about payments to consultants, Mr. Dinan stated that if a single payment is paid to a consultant for all advertising expenditures, by law, the consultant has the same responsibilities as the candidate to appropriately document and report all expenditures. He stated that after an exhaustive review of media buys in 2010, it was ultimately found that everything was appropriately documented. Mr. Dinan stated that he was not very comfortable with candidates making large payments to single consultants but it does not happen regularly. He stated that the Commission could require that a candidate be responsible for providing documentation at all levels, instead of the consultant.

It was noted that there seemed to be a predominance of Democrats that were audited. Mr. Dinan responded that party affiliation has no part in the sample selection and reminded them that far fewer Republicans opted for the public financing option in this election cycle.

Mr. Wayne informed the Commission that there were not sufficient issues to warrant an August meeting.

Mr. Duchette made a motion, seconded by Mr. Nass, to adjourn. The motion passed. The meeting adjourned at 10:20 a.m.

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