



Minutes of the August 27, 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.; André G. Duchette, Esq.; Hon. Jane Amero; Michael T. Healy, Esq.

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

Chair Walter McKee convened the meeting at 2:00 p.m.

The Commission considered the following items:

**1. Ratification of Minutes of July 31, 2014 Meeting**

Ms. Matheson moved to accept the minutes as drafted. Mr. Duchette seconded.

Motion passed (4-1) (Mr. Healy abstained).

**2. Request to Re-Open Decision not to Investigate National Gay & Lesbian Task Force**

Mr. Wayne said that at its July 31, 2014 meeting, the Commission voted not to investigate the 2009 activities of the National Gay & Lesbian Task Force (NGLTF) Action Fund and Foundation to determine whether either organization was required to register and file campaign finance reports. The next day, the Commission received a request by the National Organization for Marriage (NOM) to re-open the matter, based on the Action Fund's tax returns for two years ending June 30, 2010. Mr. Wayne said that the Commission does not have a rule or statute that addresses requests to re-open a matter.

The Commission discussed whether it could re-open a previous matter based on new information or other circumstances.

Joseph Vanderhulst, Esq., counsel for NOM, said that the basis for re-opening this matter was the 990 Form for the Action Fund and they regret that it was not part of NOM's original submittal. This information proves that this organization was very involved in the referendum in 2009 and it appears that the Action

Fund did not have enough money to cover its expenses. The funds must have come from some other source which, in NOM's view, appears to be the Foundation. He said that NOM's position is these transfers from the Foundation to the Action Fund would constitute contributions under Maine law, which would trigger reporting as a ballot question committee. Mr. Vanderhulst explained that it would have been hypocritical for NOM to introduce the NGLTF matter earlier because NOM believed its own activities complied with Maine law.

Michael K. Mahoney, Esq., counsel for NGLTF Foundation & Action Fund, said he strongly urges the Commission to deny the request mainly because of the omission of the IRS 990 form from the original submittal by NOM. He said the Commission's investigations statute places the burden on the applicant, NOM, to provide all the information necessary when filing a request for investigation. He said blaming the Commission staff for not presenting it in their investigation is disingenuous. He said NOM did not provide this document on May 28 at the hearing to discuss the matter and waited until the day of the Commission's July meeting to attempt to insert the 990 Form into the record. He further stated that this form was available to the public at any time and could have been included in the documents submitted by NOM for the May 28 hearing. He said this organization is a very sophisticated business and political entity that is fully aware of the practices of this Commission and cannot credibly claim ignorance to the law.

Mr. Duchette moved to re-open the proceeding to consider the Form 990s of the NGLTF Action Fund, arguments submitted by the National Organization for Marriage and response by the NGLTF, and to uphold the Commission's July 31 decision not to initiate an investigation. Seconded by Mr. McKee.

Motion passed 4-1 with Mr. Healy abstaining.

### **3. Request for Investigation of Human Rights Campaign (0:17)**

Mr. Wayne said that in 2009, the Human Rights Campaign (HRC) made cash contributions and provided staff assistance to the campaign against the same-sex marriage referendum through their Maine Marriage PAC. On May 28, 2014, the National Organization for Marriage requested that the Commission investigate whether the HRC was required to register and file campaign finance reports as a ballot question committee in 2009. The HRC Maine Marriage PAC registered with the Commission and reported receiving donations from individuals and from the HRC general treasury. The HRC responds that it complied with Maine

campaign finance law by forming a political action committee to report financial activity related to the referendum.

Joseph Vanderhulst, Esq. highlighted the parallels between the 2009 complaint against NOM and this matter. He said NOM has provided more information in this matter than the complainant against NOM in 2009. The Commission concluded that every donation received in response to NOM's 2009 email solicitations was a contribution and counted toward the reporting requirements. The HRC emails are worded similarly and should be treated in the same way.

Mr. Healy asked if NOM could find any evidence that the HRC Executive Director was running the No On 1 PAC in Maine.

Mr. Vanderhulst said there was nothing to suggest that was happening.

Kate Knox, Esq., counsel for HRC, said the facts in this matter are very different from the NOM matter. HRC hired local counsel, was very diligent in filing complete reports, and most importantly, started a political action committee back in 2009 when they knew they would be doing Maine-based fundraising. HRC is a sophisticated organization and complies with campaign finance rules all over the country. She said NOM has not provided any evidence that HRC did not comply with Maine law. She said HRC did not have a leadership position in this campaign.. Also, HRC had a great deal of money in the general treasury and had no problem meeting the needs of the PAC.

Mr. Healy asked if any of the employees, officers or board of directors for HRC were consultants to the No On 1 PAC. Ms. Knox said no.

Mr. Duchette moved to adopt the staff recommendation and not investigate the 2009 activities of the Human Rights Campaign, based on the analysis of the Commission staff and the information presented at the meeting. Seconded by Mr. Healy.

Motion passed unanimously.

**4. Request for Waiver of Late-Filing Penalty – Karen Gerrish (0:58)**

Mr. Wayne said Karen Gerrish was a first-time candidate for the Maine House of Representatives. She was opposed in the June 10, 2014 primary election, and won her party's nomination. In Maine, candidates who receive a contribution of \$1,000 or more, or who make an expenditure of \$1,000 or more, in the last 13 days before an election are required to file a report of the transaction within 24 hours. On June 4, 2014, Ms. Gerrish's campaign paid \$1,035 for a mailing for the primary election, but did not report the expenditure on the next day. When entering data for the regular campaign finance report due in July, the Commission's e-filing system notified her campaign that a 24-Hour Report had been due on June 5, 2014. The campaign filed the report 45 days late on July 20, 2014. The preliminary penalty for the late filing was \$465.75. Ms. Gerrish requested a waiver based on the grounds that there was no public harm and the penalty is disproportionate to the size of the campaign or the expenditure.

William P. Logan, Esq. spoke on behalf of Ms. Gerrish and said that she was satisfied with the staff's recommendation.

Mr. Healy moved to adopt the staff recommendation and reduce the penalty to \$100. Seconded by Mr. Duchette.

Motion passed unanimously.

**5. Request for Waiver of Late-Filing Penalty – Candidate Dana Lajoie (0:58:40)**

Mr. Wayne said Dana Lajoie is the Chief of Police of South Berwick. He was a first-time candidate for Sheriff of York County, but did not win his party's nomination in the June 10, 2014 primary election. On June 4, 2014, his campaign paid \$2,040 for a mailing, but did not report the expenditure on the next day. When entering data for the regular campaign finance report due in July, the Commission's e-filing system notified the campaign treasurer that a 24-Hour Report had been due on June 5, 2014. On July 22, 2014, the campaign filed the 24-Hour Report 48 days late. The preliminary penalty for the late filing was \$979.20. Chief Lajoie requested a waiver due to lack of campaign experience and because he did not know the 24-Hour Report was due. After consulting with Candidate Registrar Beth Hudson, Mr. Wayne said that the candidate was comfortable with the Commission staff's recommendation.

Ms. Matheson moved to adopt the staff recommendation and reduce the penalty to \$100. Seconded by Mr. Duchette.

Motion passed unanimously.

**6. Request for Waiver of Late-Filing Penalty – Candidate Steven Juskewitch (0:59)**

Mr. Wayne said Steven Juskewitch was a candidate for District Attorney for Prosecutorial District #7. He lost the primary election to another candidate. On June 4, 2014, he made a contribution of \$1,600 to his campaign in the form of a loan and made a corresponding expenditure of \$1,600 for a mailer. His campaign did not file a 24-Hour Report of the loan and expenditure until July 22, 2014, when the campaign entered information for the post-primary report. The preliminary penalty for the late report is \$736. Mr. Juskewitch requested a waiver because the preliminary penalty amount is disproportionate to the amount of his campaign's financial activities and experience, and lack of harm to the public.

Mr. Juskewitch stated that he was comfortable with the penalty recommended by staff, but said that he had self-funded his previous campaigns. He did not recognize that the 24-hour reporting requirement would apply to his loan of \$1,600.

Ms. Matheson moved to adopt the staff recommendation and reduce the penalty to \$150. Seconded by Ms. Amero.

Motion passed unanimously.

**7. Request for Waiver of Late-Filing Penalty – Re-Election Campaign of Hon. Paul LePage (1:03)**

Mr. Wayne said on June 9, 2014, the re-election campaign of Governor LePage received two contributions from a donor totaling \$3,000, but did not report the contributions within 24 hours. When entering data for the regular campaign finance report due in July, the Commission's e-filing system notified the deputy campaign treasurer that a 24-Hour Report had been due June 10, 2014. On July 21, 2014, the campaign filed the 24-Hour Report of the two contributions 41 days late. Based on a formula in statute, the preliminary penalty for the late filing is the \$5,000 maximum. The campaign requests a waiver of the preliminary penalty on the grounds that on June 9, 2014 the campaign made a bona fide effort to file a 24-

Hour Report of contributions received that day, but inadvertently did not include these two contributions. The campaign argued in its waiver request that there was no appreciable harm to the public from the late filing and that the penalty is disproportionate to the amount of contributions and the harm to the public.

William P. Logan, Esq., said that the campaign overlooked the check when it was filing 24-hour reports on June 9. Once the error was discovered, the new deputy treasurer called the Commission. The campaign accepts the penalty recommended by Commission staff.

Ms. Amero moved to adopt the staff recommendation and reduce the penalty to \$500. Seconded by Mr. Healy.

Motion passed unanimously.

#### **8. Request for Waiver of Late-Filing Penalty – Hon. Michael Willette (1:10)**

Mr. Wayne said State Rep. Michael Willette is running for the State Senate, District #2. He did not have an opponent in his party's primary election. On June 3, 2014, his campaign paid \$1,345 for yard signs, but did not report the expenditure on the next day. When entering data for the regular campaign finance report due in July, the Commission's e-filing system notified the campaign that a 24-Hour Report had been due on June 4, 2014. On July 22, 2014, the campaign filed the 24-Hour Report 47 days late. The preliminary penalty for the late filing was \$632.15. Through his attorney, Rep. Willette requested a waiver because of his overall compliant record with filing requirements, lack of harm to the public, and because the amount of the preliminary penalty is disproportionate to the size of the campaign and the expenditure.

William P. Logan, Esq. said that Rep. Willette accepts the penalty proposed by Commission staff.

Mr. Healy moved to adopt the staff recommendation and reduce the penalty to \$50. Seconded by Mr. Duchette.

Motion passed unanimously.

**9. Request for Waiver of Late-Filing Penalty – Allen Stehle (1:11)**

Mr. Wayne said on June 9, 2014, during the 24-hour reporting period prior to the June 10<sup>th</sup> primary election, Allen Stehle contributed \$2,000 to his campaign for Sheriff in Penobscot County, but did not file a 24-Hour Report of the contribution until July 21, 2014 when entering data for the 42-day post-primary election report. Because Mr. Stehle is not enrolled in a political party, he was not a candidate in a primary election. The preliminary penalty is \$800. Mr. Stehle requested a waiver of the preliminary penalty.

No members of the public commented on this matter.

Ms. Amero moved to adopt the staff recommendation and waive the monetary penalty. Seconded by Mr. Duchette.

Motion passed unanimously.

**10. Request for Waiver of Late-Filing Penalty, Senate Democratic Campaign Committee PAC (1:12)**

Mr. Wayne said in July 2014, the Senate Democratic Campaign Committee PAC conducted an internal review of its PAC reports after discovering a discrepancy in the PAC's cash balance. The PAC found several reporting errors in its 2014 April Quarterly Report, including the omission of two large contributions. The PAC brought the omissions to the Commission staff's attention. Although the report was filed on time and accurately disclosed many transactions, it did not substantially conform to the disclosure requirements. According to procedures in the Election Law, the report is considered late. The preliminary penalty for the late report is \$14,347.40. In its request for a waiver of the late-filing penalty, the PAC took responsibility for the errors, but believes that the preliminary penalty is disproportionate to the mistakes and to the harm to the public from the late disclosure.

Mr. Duchette moved to adopt the staff recommendation and reduce the penalty to \$500. Seconded by Ms. Amero.

Motion passed unanimously.

**11. Request for Waiver of Late-Filing Penalty – Maine Democratic Party (1:15)**

Mr. Wayne said on June 3, 2014, the Maine Democratic Party received a \$10,000 contribution, which it was required to disclose the next day in a 24-Hour Report. In the course of filing its post-primary report in July, the Commission’s e-filing system notified the party that a 24-Hour Report was overdue. The party filed the report 48 days late on July 22, 2014. The party requested a waiver of the \$4,800 preliminary penalty because it believed no reporting was necessary since it was not involved in the primary election, and because the preliminary penalty is disproportionate to the harm to the public by the late disclosure.

Kate R. Knox, Esq., spoke on behalf of the party. She said that the party was not conducting activities to influence the primary election and was not alert to the 24 hour reporting requirement before the primary.

Mr. Healy moved to adopt the staff recommendation and reduce the penalty to \$500. Seconded by Mr. Duchette.

Motion withdrawn.

Ms. Matheson moved to assess a penalty of \$750. Seconded by Ms. Amero.

Motion passed 4-1 with Mr. McKee opposed.

**12. Request for Waiver of Late-Filing Penalty – Maine Credit Union League PAC (1:24)**

Mr. Wayne said on June 2, 2014, the Maine Credit Union League PAC made \$4,000 in contributions to other PACs, which it was required to disclose the next day in a 24-hour report. The PAC filed the report 49 days late on July 22, 2014. The preliminary penalty amount is \$1,960. The Maine Credit Union League PAC requested a waiver of the preliminary penalty because the PAC believed it did not have to file 24-hour reports if it was not involved in the primary election.

Mr. Healy moved to assess a penalty of \$500.

Motion withdrawn.



Benjamin Marcus, Esq., counsel for the Credit Union League PAC, said the money was not intended to influence any particular campaign in the primary election. He explained that the PAC has a greater understanding of the reporting requirement and will be more careful.

Mr. Duchette moved to adopt the staff recommendation and reduce the penalty to \$250. Seconded by Ms. Amero.

Motion passed unanimously.

### **13. Request for Reconsideration of Finding that Campaign Finance Report was Late (1:27)**

Mark Holbrook is a candidate for Maine House of Representatives, District 50. Mr. Holbrook is asking the Commission to reconsider a June 25, 2014 decision that his 11-Day Pre-Primary Report was late. On the filing deadline (May 30), he entered into the Commission's e-filing software an expenditure he had made for campaign purposes, but he did not file the report. There is no monetary penalty for the late filing.

Ms. Matheson moved to deny the request for reconsideration. Seconded by Mr. Duchette.

Motion passed unanimously.

### **Executive Session**

Pursuant to Title 1 of the Maine Statutes, section 405(4), Mr. McKee moved to meet in executive session pursuant to Title 1, section 405(6)(E) to consult with the Commission's counsel concerning pending litigation. Mr. Healy seconded. Motion approved (5-0). The Commission went into executive session at 3:35 p.m.

At 4:05 p.m., Mr. McKee moved to come out of executive session. Mr. Duchette seconded. Motion approved (5-0).

**Other Business - Contribution limits in the 2014 Gubernatorial Race (1:33)**

In light of a decision by the U.S. District Court for the District of Maine in *Woodhouse, et al. v. Maine Commission on Governmental Ethics and Election Practices, et al.*, the Commission considered a proposed policy concerning enforcement of contribution limits in the 2014 gubernatorial election. Under the policy, the Commission would not enforce the \$1,500 per election limit against donors giving to 2014 gubernatorial candidates, provided that the donor has given no more than \$3,000 to the candidate for the entire 2014 election cycle.

Kate Knox, Esq., counsel for the Maine Democratic Party, said it supports the proposed enforcement policy and is the most equitable solution.

Melissa Hewey, Esq., counsel for the plaintiffs in the *Woodhouse* lawsuit, stated support for the proposed enforcement policy since it is fair to all candidates. As a practical matter, the proposed enforcement policy makes sense and will resolve the matter, rather than continue with litigation.

Andrew Bossie, Executive Director for Maine Citizens for Clean Elections (MCCE), said that the MCCE opposed the proposed enforcement policy. Instead, the MCCE supports two \$1500 limits for the primary and general election periods for unenrolled candidates. This would keep contribution limits down which is in the spirit of the Clean Election program.

Mr. Duchette moved to accept the proposed enforcement policy as written. Seconded by Ms. Matheson.

Ms. Matheson stated that this policy is for the 2014 election cycle only, based on the circumstances of the gubernatorial race.

Motion passed unanimously.

Meeting adjourned at 4:15 p.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director