



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

Minutes of the August 31, 2016, Meeting of the  
Commission on Governmental Ethics and Election Practices  
45 Memorial Circle, Augusta, Maine

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

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

Commissioner Matheson convened the meeting at 9:02 a.m. The Commission considered the following items:

**1. Ratification of the Minutes from July 20, 2016 and August 10, 2016.**

Mr. Lee moved to accept the July 20, 2016 minutes as amended. Mr. Nass seconded the motion. Motion passed (4-0; Mr. Pattershall abstained). Mr. Lee moved to accept the August 10, 2016 minutes as written. Mr. Nass seconded the motion. Motion passed (5-0).

**2. Overview of Late-Filing Penalties**

Mr. Wayne stated the materials for this agenda item were to provide the Commission with information about past penalties and were meant to serve as background for the other agenda items.

**3. Request for Waiver of Late-Filing Penalty – Androscoggin County Republican Committee**

Mr. Wayne stated that on June 7, 2016 the Androscoggin County Republican Committee (the Committee) made an expenditure of \$5,190.09 to rent a venue for a fundraiser. The Committee was required to report this expenditure in a 24-Hour Report by June 8, 2016, but did not do so until July 10, 2016. Mr. Wayne stated the expenditure was not related to any candidate in the primary election or ballot question. The Committee is requesting a waiver of the penalty due to the inexperience of its treasurer and executive committee.

Mr. Lee asked if it were possible for the Commission's e-filing system to send a notification to the local party committees alerting them of the 24-hour reporting period. He thought it might be worth it to send them some type of notification if it prevented some of these types of violation. Mr. Wayne responded that part of the reason staff does not send notification to the local party

committees is the high turnover rate for committee officers but agreed that staff should give this some consideration in the future. Mr. Lee reiterated that he thought it would be worth the time and effort to do a mailing or some form of notification if it lessened the number of these violations.

Ms. Lowry stated she thought staff did a good, consistent job in making its recommendations to the Commission. She noted this was listed as the Committee's second violation and that the penalty was calculated at the 4% rate. She asked what the first violation was and if there is a certain timeframe that determines the penalty rate for violations. Mr. Wayne responded that the penalty rate is 2% for a first violation, 4% for a second violation and 6% for each violation thereafter if they occur within a two year timeframe. The percent used for the penalty calculation resets each election cycle. He stated the Committee's first violation involved a unique situation with the Committee's prior treasurer earlier this year.

Patti Gagne, County Chair of the Androscoggin County Republican Committee, and Shane Bouchard, member of the Committee's executive committee, appeared before the Commission. Ms. Gagne stated the Committee thought a waiver was reasonable because of the inexperience of the treasurer, who had been voted in last January, and its executive committee, which had been voted in at the state convention. She said the treasurer has done a great job since he took over and has been diligent about entering information on a monthly basis. Ms. Gagne said the treasurer filed the 24-Hour Report as soon as the reminder popped up.

Mr. Bouchard stated the prior executive committee had been in place for a long time and had a lot of experience. He said the new treasurer was unaware of the 24-hour reporting period and only found out about it when he was entering the expenditures for the 42-Day Post-Primary Report. Mr. Lee asked why this was not caught sooner. Mr. Bouchard responded that this was a different kind of report and the treasurer is still learning the process. Ms. Matheson stated the Commission staff is available for questions and, when there are member turnovers, it is a good idea for the new members to contact the staff to ask questions and learn about the campaign finance reporting process.

Mr. Nass made a motion to adopt the staff recommendation (to find a violation and assess a \$150.00 penalty). Mr. Pattershall seconded the motion. Motion passed (5-0).

#### **4. Request for Waiver of Late-Filing Penalty – Friends of Maine Hospitals PAC**

Mr. Wayne stated that on June 6, 2016, the Friends of Maine Hospitals PAC (the PAC) made two \$1,000.00 expenditures in the form of contributions to two other PACs. It was required to report these expenditures in a 24-Hour Report by June 7, 2016, but did not do so until July 19, 2016. The PAC requested a waiver due to the inexperience of its treasurer regarding 24-Hour Reports and the lack of public harm as the expenditures were not related to any candidate in the primary election or ballot question. He stated the PAC had elected not to have anyone present at this meeting.

Mr. Nass made a motion to adopt the staff recommendation (to find a violation and assess a \$500.00 penalty). Mr. Lee seconded the motion. Motion passed (5-0).

Mr. Lee asked if the language in the second to last paragraph of the July 27<sup>th</sup> penalty letter sent to the PAC should be changed to “the Commission may waive the penalty in whole or in part” to avoid giving the impression that the waiver is an all or nothing situation. Ms. Lowry suggested changing the letter to say “to waive or reduce the penalty.” Mr. Pattershall stated the statute does say the Commission may waive the penalty in whole or in part. It was agreed that it would be good to change the letter to better reflect how the statute is written.

#### **5. Request for Waiver of Late-Filing Penalty – Citizens Who Support Maine’s Public Schools PAC**

Mr. Wayne stated that on June 10, 2016, the Citizens Who Support Maine’s Public Schools PAC (the PAC) received an in-kind contribution of \$8,245.42 from the Maine Education Association. It was required to report this contribution in a 24-Hour Report by June 11, 2016, but did not do so until July 22, 2016. The PAC requested a waiver due to the inexperience of the PAC’s Principal Officer in reporting contributions during the 24-hour reporting period and the lack of harm to the public from the late filing.

Mr. Lee asked if there was a computer-generated notice sent to PACs/BQCs about the 24-hour reporting period. Mr. Wayne said the e-filing system only sent a reminder about the 11-Day Pre-Primary report but staff had mailed reminder postcards about the 24-hour reporting period at the end of May. Mr. Lee asked if it would be an inconvenience to add a reminder about the 24-hour reporting period to the e-filing system. Mr. Wayne stated the staff would look into it making this change. Mr. Pattershall asked if the filing schedule is sent to all PACs/BQCs. Mr. Wayne said the

filing schedule is not mailed but is posted on the Commission's website and is displayed on the home page of every active PAC, BQC, party committee and candidate in the e-filing system.

Mr. Nass commented that all these PACs were tripped up by this 24-hour reporting period and none of these violations would have happened if they had received or spent their money prior to or after the 24-hour reporting period. Mr. Wayne agreed that the timing of contributions and expenditures just happened to fall within the 24-hour reporting period and were unrelated to the primary election. Mr. Nass stated that the public believes it is important to know where the money comes from. If the information is to have any value, then the disclosure should be made now when people are beginning to pay attention to the upcoming ballot questions.

Mr. Lee said he was concerned that these PACs are getting caught up in this rapid reporting requirement for an upcoming primary election even though the contributions and expenditures are unrelated to that election. The individuals who are involved in the PACs are not thinking that the contributions or expenditures have to be reported in connection with the primary election because the PAC is not involved in the primary election. He stated it did not appear to him that this reporting requirement would have been designed to apply to a PAC contribution meant to influence the general election. In practice, however, just because the contribution was received before the primary election the PAC has to report it immediately. The 24-Hour Report for the primary election is meant to immediately inform the public about contributions and expenditures related to the upcoming primary election, not the general election in November. Ms. Gardiner pointed out that the PAC could be making a contribution to a candidate in the primary. She said distinctions must be made about what the PAC or BQC is spending its money on and making those factual distinctions could be difficult.

Robert Walker, President of the PAC and Executive Director of the Maine Education Association (MEA), appeared before the Commission. Mr. Walker stated that Mr. Lee had made his point. Because the in-kind contribution was unrelated to any candidate in the primary election, he was unaware of the necessity to file a 24-Hour Report. He believes a distinction should be made between financial activity related to candidates in a primary election and financial activity related to a ballot question on the general election ballot.

Mr. Nass stated MEA and Mr. Walker have been politically active for a long time. Mr. Walker agreed but stated that being in charge of PAC filings is a new responsibility for him.

Ms. Matheson said the statute is written as it is written and the Commissioners may want to propose a statutory amendment to differentiate between PACs/BQCs and candidates regarding the 24-hour reporting requirement. Ms. Matheson said PACs are not all that transparent. With the statute as currently written, there is no need to parse which contributions and expenditures should be included in a 24-Hour Report, but she understands how it catches some PACs by surprise. Ms. Matheson stated that while she sympathizes, she is inclined to support the staff recommendation.

Mr. Walker stated he has no objection to the staff recommendation. He only appeared before the Commission to answer questions.

Mr. Lee made a motion to accept the staff recommendation (to find a violation and assess a \$500.00 penalty). Mr. Nass seconded the motion.

Mr. Lee said that it may be possible to craft an amendment to the statute such that contributions and expenditures unrelated to a primary election do not have to be reported in a 24-Hour Report. However, there is also a danger that the factual analysis of the statute's application in a specific case could be very difficult.

Mr. Pattershall stated it appeared they have some discretion under the statute to look at mitigating factors to make their determination. Mr. Nass cautioned that the more discretionary judgment is used, the longer the record becomes and the harder it becomes to justify their actions.

Motion passed (5-0).

## **6. Request for Waiver of Late-Filing Penalty – Energy PAC for Maine**

Mr. Wayne stated that on June 9, 2016, the Energy PAC for Maine (the PAC) received a \$5,000 contribution from the Maine Energy Marketers Association, the trade association that founded the PAC. The PAC was required to report these expenditures in a 24-Hour Report by June 10, 2016, but did not do so until July 22, 2016. The PAC requested a waiver because the late filing was inadvertent and was due to the treasurer's inexperience, and because the preliminary penalty is disproportionate to the amount of the PAC's financial activity and the harm to the public.

Daniel Riley, Esq., counsel for the PAC, appeared before the Commission. Mr. Riley stated he accepted the staff recommendation with one caveat. All the statutory requirements as to why the waiver is reasonable are met, but there is one fact that merits more attention - the expenditures that were made prior to the primary were four \$250 contributions. Individually these contributions would not have triggered the 24-hour reporting requirement. He stated that the business manager for the Maine Energy Marketers Association had been authorized to make a transfer to the PAC to cover these contributions but the business manager made a \$5,000 transfer in preparation for the general election. Mr. Riley stated he had done an analysis of the record of past penalties and pointed out that similar violations in the past had been assessed penalties of \$250 and suggested that would be a more appropriate penalty for this violation.

Mr. Riley stated he would be happy to work with the Commission staff to conduct a training seminar for PACs to educate them on reporting requirements and in particular about the 24-hour reporting period. He also stated he would be willing to assist with legislative revisions to this statute.

Mr. Lee stated that the examples Mr. Riley cited for a lower penalty were done under the old statute, prior to the doubling of the penalties. Mr. Riley agreed but stated that the harm in this particular case was related to the \$1,000 in contributions and that should be an additional mitigating factor for them to consider.

Mr. Nass made a motion to accept the staff recommendation (to find a violation and impose a penalty of \$500). Mr. Pattershall seconded the motion. Motion passed (5-0).

## **7. Request for Waiver of Late-Filing Penalty – Campaign to Regulate Marijuana Like Alcohol**

Mr. Wayne stated that on June 1, 2016, the Campaign to Regulate Marijuana Like Alcohol PAC (the PAC) made two expenditures for consulting services totaling \$95,752.42. It was required to report these expenditures in a 24-Hour Report by June 2, 2016, but did not do so until July 27, 2016. The total penalty is \$95,752.42, but the staff recommends a reduction to \$2,500. While the staff believed that the penalty is disproportionate to the public harm, the recommended penalty takes into account the large amount of expenditures that were not reported on time.

Mr. Wayne said the PAC requested a waiver based on its treasurer's inexperience and the disproportionality of the preliminary penalty to the harm to the public. Mr. Wayne stated there is a special factor they may want to consider in this matter: the PAC's treasurer had attempted to file a 24-Hour Report in November 2015 and had been advised by staff that, because there were no candidates on the ballot, they did not have to file 24-Hour Reports. The treasurer assumed that, based on the advice he received in November, the 24-hour reporting period before the primary also did not apply to the PAC.

Ms. Matheson stated she is confused by this and Mr. Lee agreed. Ms. Lowry stated that Mr. Wayne had explained in his memo there was no 24-hour reporting requirement because 2015 was an off-year election. Mr. Wayne explained that in the off-year elections, there are no candidates on the ballot. It has been the policy of the staff to advise PACs/BQCs that they are only required to file the quarterly reports unless they are involved in a ballot question election.

Mr. Lee asked where in the statute it allowed the staff to make this distinction. A discussion ensued regarding the interpretation of 21-A M.R.S.A. § 1059(2) and the filing requirements for 24-hour reports in years in which there is no primary or general election. Mr. Wayne asked if the Commissioners would prefer to clarify this issue through a rulemaking or a legislative revision. Mr. Nass stated he would prefer to have the Legislature look at this. Ms. Matheson agreed and asked staff to prepare something for the next meeting.

Katherine Knox, Esq., counsel for the PAC, appeared before the Commission. Ms. Knox stated the issues in this case are the same as the issues in the prior cases. The only difference is the amount of money. She stated the treasurer was aware of the 24-hour reporting period because he had attempted to file a 24-Hour Report in the November 2015 election. However, he had been informed by the Commission staff that the PAC did not have to file a 24-Hour Report because it was the off-year election. The treasurer's error was assuming that, based on the advice given in November 2015, the 24-hour reporting period did not apply because their issue was not on the June primary election ballot. Ms. Knox stated the expenditure was a payment to a consultant and was not related to the primary election.

Mr. Lee asked if the staff advice was given in an email or via telephone. Mr. Wayne stated the only written advice was on the filing schedule and then a telephone call from the staff to the treasurer.

Mr. Lee stated he was interested in whether the advice given was specific or more general. Mr. Lee asked Ms. Knox if it was her understanding that her client was told that it did not have to file in the off-year election. Ms. Knox agreed that was her understanding. However, she clarified that her interpretation of an off-year election is very different from her client's. Her client's interpretation was that an off-year election is any election that does not directly involve its issue. Mr. Lee asked Mr. Wayne if the staff advice was that, during the off-year election, committees do not have to file a 24-Hour Report under these circumstances. Mr. Wayne confirmed that it is. Ms. Knox stated that part of the confusion stems from the statute. She stated she would not interpret (2)(E) to have a lot of discretion and she believes it confuses people to have the staff tell them they are doing it one way in the off-year election and another way in a regular election year.

Mr. Nass stated the value of this information for the public is where the money is coming from and he assumes that the source has been reported in past reports. Ms. Knox confirmed that it had been and a review of the reports would show exactly where the money came from.

Ms. Lowry stated that it is significant that the statute draws a distinction between the primary and general elections on the one hand and special and ballot question elections on the other, even though the actual reporting requirements are the same. On the basis of that distinction, the staff's advice is a reasonable interpretation of the statute. She would prefer the provision regarding the 24-hour reporting period to refer to either the primary and general elections or a special or ballot question election. However, she does not believe that a legislative revision is necessary.

Ms. Matheson stated she believes there is a violation and would suggest lowering the penalty to \$2,000.

Mr. Nass made a motion to accept the staff recommendation (to find a violation and assess a \$2,500.00 penalty). Mr. Lee seconded the motion.

Mr. Lee stated the reason he pursued his prior line of questioning was to determine whether the advice given by staff was erroneous but there is no evidence that it was. He said the person who got the staff's advice may have thought it had a broader application than actually conveyed by the staff. The treasurer could have made a call to find out whether that advice was still applicable for the primary election. He said, however, that because the term "election" is not modified in subsection



E, it would appear that the 24-hour reporting requirement applied to any election. Mr. Lee also said that there was little public harm caused by the late disclosure in this case and the statutory penalty was disproportionate.

Ms. Matheson said, under the circumstances, she could support the motion. Mr. Pattershall agreed and stated that a call by the PAC to the Commission staff or the PAC's counsel could have averted this violation.

Motion passed (5-0).

### **8. Request for Waiver of Late-Filing Penalty – Fair Vote BQC**

Mr. Wayne stated Fair Vote is a national organization. On June 13, 2016, it registered as a ballot question committee supporting the citizen initiative on ranked choice voting and filed its initial report. On June 7, 2016, the Fair Vote BQC (the BQC) made an expenditure for data analytics and modeling services totaling \$33,000 and a \$280 expenditure for staff time. It should have included these expenditures in its initial campaign finance report filed on June 13, 2016. However, the BQC did not disclose these transactions until it amended its initial report on July 26, 2016. The Commission staff views the initial report as late because it did not substantially conform to the disclosure requirements in the Election Law. The BQC requested a waiver of the \$10,000 preliminary penalty because the omissions were inadvertent and the preliminary penalty is disproportionate to the harm to the public from the late disclosure, as well as other reasons.

Douglas Clopp is the treasurer for Fair Vote BQC and the National Director for Outreach with FairVote, which is a 501(c)(3) non-profit headquartered in Tacoma Park, Maryland. He stated FairVote supports and provides education on ranked choice voting nationwide. In June, FairVote decided to conduct a poll to see where ranked choice voting stood with Maine voters. Because the expenditure was greater than \$5,000, FairVote registered as a BQC. Mr. Clopp stated he filed the initial report but when he was preparing the 42-Day Post-Primary Report, he realized he needed to amend the initial report to include the expenditures for \$33,000 and \$280. Mr. Clopp said that he agreed the staff's recommendation.

Cliff Ginn, Esq., counsel for Fair Vote BQC, appeared before the Commission. He stated Mr. Clopp did a good job of presenting this issue to the Commission and pointed out there are several

mitigating factors to be considered in this case: first time reporting, limited harm to the public, and a family emergency for the treasurer.

Mr. Nass asked whether there were additional contributions to the BQC. Mr. Clopp stated the BQC's funds were general treasury transfers from the national organization. Mr. Nass stated this money transfer seems similar to that in the NOM case in that there is no indication of where the money is coming from. Ms. Gardiner clarified that the difference is whether an organization is raising money for the purpose of influencing a Maine election or whether a national organization has money on hand and simply transfers it, which is a general treasury transfer. The Commission found, as a factual matter, that NOM did not have the funds on hand. Instead, NOM raised the money for the Maine campaign and other campaigns and then transferred the money to the Maine campaign.

Mr. Clopp stated that as a 501(c)(3), FairVote is required to publicly list its donors.

Ms. Matheson made a motion to accept the staff recommendation (to find a violation and assess a \$500.00 penalty). Ms. Lowry seconded the motion. Motion passed (5-0).

Mr. Lee noted that there was no indication that there was an intentional violation, otherwise the penalty would be substantially higher.

### **9. Request for Waiver of Late-Filing Penalty – Lee Ann Betz**

Mr. Wayne stated that Lee Ann Betz, a first-time Maine Clean Election Act (MCEA) candidate for the Maine House of Representatives, was one day late filing the 42-Day Post-Primary election campaign finance report due on July 26, 2016. The only transaction that had to be reported was the receipt of the MCEA payment for the general election. The preliminary penalty is \$100. The candidate requested a waiver of the penalty because the late filing was due to a family emergency. Once notified of the late report, the candidate filed the report within one day. Ms. Betz was not present for the meeting due to a professional commitment.

Mr. Lee stated the death of a parent of the treasurer certainly was a valid emergency and qualified as a mitigating circumstance sufficient to grant a waiver. Mr. Lee made a motion to accept the staff

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

**10. Request for Waiver of Late-Filing Penalty – Hon. Christine B. Powers**

Mr. Wayne stated that Representative Christine Powers, candidate for House District 68, was one day late filing the 42-Day Post-Primary Report that was due by July 26, 2016. The preliminary penalty is \$100.00. She requested a waiver because her treasurer mistakenly believed that entering an expenditure in the Commission's e-filing system resulted in the filing of the report.

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

**11. Request for Waiver of Late-Filing Penalty – Ryan McDonald**

Mr. Wayne stated that Ryan McDonald is a candidate for the State Senate. On June 3, 2016, he filed his first campaign finance report which showed no financial activity. However, he should have reported the receipt of one contribution. He said Mr. McDonald told the Commission staff that he did not report the contribution because he did not have all of the required details. He attempted to amend the report three days later to include the contribution, but did not successfully file the report. The Commission staff views the report as filed on June 3, 2016 to be late because it did not substantially conform to the disclosure requirements. Mr. Wayne stated that staff understands that candidates and committees do make mistakes and may omit some transactions from their reports. However, if a report is 80% to 90% complete, the staff will view the report as filed on time. In this case, there was only one transaction to report and the candidate decided not to report it.

Mr. Nass asked if traditionally financed candidates have a belief that they are not held to the same disclosure requirements as MCEA candidates. Mr. Wayne stated that there are always some who do think that, but the staff educates them about their reporting responsibilities.

Ms. Matheson asked if Mr. McDonald was present. Mr. Wayne stated he was not present. Mr. Lee stated he has a real problem with this case because at the bottom of the report there is a statement that the person filing the report is certifying the accuracy of the report. He stated that Mr. McDonald filed this report knowing it was not accurate and filing a false statement is a Class E

crime. Mr. Nass stated that former Commissioner Healy used to raise this issue of false statements being made in campaign finance reports. Mr. Nass said it is difficult to get candidates to run and if they are confronted with potential criminal prosecution, it will be harder to recruit individuals to run. Mr. Lee stated that he not suggesting criminal prosecution but he has a hard time seeing any way to reduce the penalty based on the false statement and the tone of Mr. McDonald's letter requesting a waiver.

Mr. Lee made a motion to find a violation and assess a penalty of \$397.50 because there is a significant harm to the public in that Mr. McDonald intentionally filed a false statement.

Mr. Nass stated he did not believe Mr. McDonald was aware of the consequences of his actions. Mr. Lee stated Mr. McDonald deserved the benefit of the doubt as he is not present to defend himself. Mr. Wayne stated that staff had made a follow-up call to Mr. McDonald to inform him of the staff recommendation and that it would be in his best interests to attend.

Ms. Lowry said that Mr. Lee's arguments were important and persuasive, but if the candidate had to choose between attending this meeting and being assessed a \$50 penalty and going to work, his absence may be understandable. She thought it would be a good idea to reschedule and have staff convey the importance of his attending the meeting.

Mr. Lee withdrew his motion. He made a motion to reschedule this matter to the next regularly scheduled meeting.

Mr. Pattershall stated that if the penalty is \$50, he did not believe it would make a difference to Mr. McDonald to reschedule this to the next meeting. Ms. Lowry said that the staff would convey to Mr. McDonald that the Commission was considering a much higher penalty and that may make a difference to him in considering whether to be present. Mr. Pattershall said he was inclined to follow the recommendation of the staff. He said that, given the amount of the unreported contribution, he was uncertain whether it was necessary to enhance the penalty.

Ms. Matheson stated she believed Mr. McDonald made an effort to correct the report and that if he understood the seriousness of the false statement he would attend. She would support rescheduling this matter if they were considering a higher penalty, such as \$100. Ms. Lowry stated she could support a \$100 penalty.

Ms. Matheson made a motion to find a violation and assess a \$100 penalty. Mr. Nass asked if the motion was based on a finding of violation due to the false statement. Ms. Matheson said it was. Ms. Gardiner stated they are starting with a penalty of \$397.50 and determining whether to reduce the penalty. Ms. Matheson stated Mr. McDonald attempted to fix the report within a short time but expressed disappointment that he did not contact the Commission staff about this matter. Mr. Lee said that he was interested in hearing Mr. McDonald's answers to their questions. Ms. Matheson said that if this matter is rescheduled, the importance of attending the meeting must be stressed to Mr. McDonald. Mr. Wayne stated staff would call Mr. McDonald and send him a letter emphasizing the importance of his attendance

Mr. Lee made a motion to continue this matter to the next regularly scheduled meeting and that the Commission staff send him a letter informing him of the full range of penalties being considered and stress the importance of his attendance. Ms. Matheson seconded the motion. Motion passed (5-0).

## **12. Request for Waiver of Late-Filing Penalty – Bil Weidner**

Mr. Wayne stated that Bil Weidner, an MCEA candidate for House District 52, was two days late filing the 42-Day Post-Primary campaign finance report that was due by 11:59 p.m. on July 26, 2016. The e-filing system sent a reminder email on July 27<sup>th</sup> that the report was late and the Commission staff also sent two emails to Mr. Weidner. Mr. Weidner contacted the Commission staff, stating he only had one transaction to report and that he had been unable to contact his treasurer. The Commission staff helped him file the report. Mr. Weidner requested a waiver based on his inexperience as a first-time candidate and that his treasurer had been ill during the month of July.

Ms. Matheson asked what the difference was between this case and the McDonald case. Ms. Gardiner stated Mr. McDonald was 53 days late; Mr. Weidner was two days late. Ms. Gardiner also noted that the difference is the amount of financial activity. Mr. Weidner received the initial distribution of \$5,000 in MCEA funds that was automatically added to his report and he had one expenditure of \$317. Mr. McDonald had one contribution of \$375 that he failed to enter into his report.

Mr. Nass made a motion to accept the staff recommendation (to find a violation and assess a \$100.00 penalty). Mr. Pattershall seconded the motion. Motion passed (5-0).

### **13. Request for Waiver of Late-Filing Penalty – Hon. Roger Katz**

Mr. Wayne stated that Senator Roger Katz, candidate for Senate District 15, was unopposed in the primary election. Senator Katz contracted with Corporate Support Solutions to provide clerical services to the campaign. He made a payment of \$1,000 for these services on the day before the primary election, June 13<sup>th</sup>. Because of the timing and amount of the expenditure, Senator Katz should have filed a 24-Hour Report on June 14<sup>th</sup>. When he entered the transaction into the Commission's e-filing system in order to file the 42-Day Post-Primary Report, Senator Katz was prompted to file a 24-Hour Report, which he did on July 25<sup>th</sup>.

Senator Roger Katz appeared before the Commission. Senator Katz stated he believed his letter requesting a waiver explained the circumstances of this violation. He was unaware of the rule and his payment of the bill simply coincided with the timing of the 24-hour reporting period. He had no intention to gain any advantage by delaying the report of the expenditure.

Ms. Matheson stated the staff brought the issue of the 24-hour reporting requirement in uncontested primaries to the Commission's attention at its meeting on June 29<sup>th</sup>. In the Commission's view, the statute is clear about the filing requirement.

Mr. Lee stated he understands the circumstances under which this violation occurred and believes a \$50 penalty is appropriate.

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

### **14. Request for Waiver of Late-Filing Penalty – Gary Drinkwater**

Mr. Wayne stated that Gary Drinkwater, candidate for House District 121, was 32 days late filing a 24-Hour Report that was due on June 10, 2016. The preliminary penalty is \$677.12. Mr. Drinkwater is a first time candidate who did not have an opponent in the primary. He was unaware that the 24-hour reporting requirement would apply for the primary election.

Ms. Matheson stated that it appeared to her that the circumstances of this case were the same as those in the prior matter. Ms. Matheson made a motion to accept the staff recommendation (to find a violation and assess a \$50.00 penalty). Ms. Lowry seconded the motion. Motion passed (5-0).

### **15. Request for Waiver of Seed Money Exception – Rosemary Monahan**

Mr. Wayne stated that Rosemary Monahan is a replacement candidate for House District 146, and is an MCEA candidate. Ms. Monahan collected seed money and purchased signs, palmcards and t-shirts for a variety of events she participated in to get her name out in the public. One order of t-shirts was paid by the candidate's treasurer who used her credit card. It was that purchase that caused the campaign to exceed the seed money contribution limit of \$1,000. Most of the overage was due to shipping costs. Mr. Wayne stated other MCEA candidates have overspent their seed money but not as much as in this case. Ms. Matheson asked how the staff has dealt with past seed money overages. Mr. Wayne said this is an easy mistake for candidates to make, but generally the overages are in the range of \$20-\$80. Mr. Nass asked if the overage could be made up by reducing her MCEA funds. Mr. Wayne stated that if Ms. Monahan is allowed to continue as an MCEA candidate she would have to reimburse the treasurer with MCEA funds.

Sarah LeClair, treasurer for Rosemary Monahan, appeared before the Commission. Ms. LeClair accepted full responsibility for this violation. She stated that due to the very short timeframe the campaign had to become known to the voters, especially in such a large rural area, they had to incur these costs in order to campaign. She stated they thought the seed money was to start a campaign not fund one but they had to use that money to fund the campaign because the candidate had no materials.

Mr. Nass stated he has no problem with this as long as Ms. LeClair is reimbursed; good candidates are hard to find. Ms. Lowry agreed and said Ms. Monahan should be allowed to continue in the program.

Rosemary Monahan appeared before the Commission. She stated both she and Ms. LeClair were heartsick to have violated the Maine Clean Election Act. They both have the highest respect for the program.

Mr. Lee asked if they were aware of the \$1,000 restriction and how this math error occurred. Ms. LeClair stated they had thought the second t-shirt order would be paid when Ms. Monahan received her MCEA funds, which she now knows was a wrong assumption. Ms. Monahan agreed and said they made a mistake with the first t-shirt order and had to place another order, which led to this violation. Ms. LeClair stated this was a difficult process because they were collecting the \$5 qualifying contributions and seed money in a very compressed timeframe.

Ms. Matheson said the initial overage amount is 24% over but the shipping charges were almost \$200. This campaign would not have had this expense if it had the normal amount of time. If the shipping charges were removed, the overage would be reduced to approximately \$40. When viewed in this light, the overage is not significant.

Mr. Lee asked if there was any discussion about the word “significant” when the Rule was adopted. Mr. Wayne responded he believed the Rule predated his tenure at the Commission. Ms. Gardiner agreed and stated she believed it was adopted in the first implementation of rules in 2000-2001. However, she did not specifically recall a discussion regarding the adoption of a standard that would be applied to a range of factual circumstances. She corrected herself to say it was adopted in 1998 and she does not know if this provision was in it. Mr. Lee asked how many of these cases involving seed money restriction violations does the Commission staff handle each election. Mr. Wayne stated it is usually the contributions that cause this problem and candidates just return the excess contributions. He stated he believed there were no more than 15 cases per election cycle. In the past, the staff initially referred all of them to the Commission but a former Chair gave staff the discretion to handle the smaller violations. Mr. Lee expressed concern about setting a precedent. Mr. Wayne stated the Commission staff would not view this as precedent setting and would continue to refer matters over \$50-\$70 for the Commission’s review. Ms. Gardiner said that Ms. Matheson’s point regarding the shipping cost is a factual circumstance that is a specific factor in this case that the Commission can rely on in granting the exception of the seed money restrictions.

Mr. Lee made a motion that in light of the fact that the candidate is a replacement candidate with a short period of time to raise money and that 80-90% of overage was for shipping charges, not goods or services, the Commission finds this was not a significant over-expenditure, and therefore, waives the overage, provided it is returned and all other conditions under the Rule have been met, thereby qualifying her to be a Clean Election fund candidate. Mr. Pattershall suggested that the motion



could clearly state that under the unique facts of this case, Ms. Monahan is allowed to remain a Clean Election fund candidate because this was not a significant violation. Ms. Gardiner stated they are being asked to approve a petition to restore her eligibility for certification based on a finding that she meets all the criteria in the Rule.

Mr. Lee made a motion to qualify Rosemary Monahan for Clean Election funds on the basis that under the Commission's Rules, Chapter 3, Section 2 (3)(F) she has met criteria 1, 2 and 3 and that criterion 4 is met in that a large majority of the overage was due to expedited shipping costs necessitated by her being a replacement candidate with a very short period of time in which to qualify for Maine Clean Election funding. Mr. Nass seconded the motion.

Ms. Matheson asked Mr. Wayne to confirm that the campaign would have to make a reimbursement to Ms. LeClair. Mr. Wayne agreed. Ms. Matheson asked if that would cause a seed money violation. Mr. Wayne stated it would not. Ms. Gardiner clarified that the Commissioners are not being asked to qualify Ms. Monahan; the staff can qualify her and they have looked at the other factors for qualification. The Commission is being asked to approve a petition to restore her eligibility for certification. Mr. Lee agreed to a friendly amendment of his motion to reflect Ms. Gardiner's clarification.

The motion as amended is: To restore the candidate's eligibility for participation in the Maine Clean Election program on the basis that under the Commission's Rules, Chapter 3, Section 2(3)(F) she has met the criteria for 1, 2 and 3, and that the criteria for 4 were met in that a large majority of the overage was due to expedited shipping costs necessitated by her being a replacement candidate with a very short period of time in which to qualify for Maine Clean Election funding. Motion passed (5-0).

Mr. Nass stated he would appreciate a report on the replacement candidate process at a future meeting. He also expressed concern about the t-shirt expenditure in this case, which has been discussed in the past and it would be good to discuss this again at a future meeting.

## **16. Commission Rulemaking – House Party Exception**

Ms. Matheson stated that it appeared that the only comments had come from the Maine Citizens for Clean Elections and the rule is ready for final adoption. Mr. Wayne agreed unless there was something they wanted to change.

Mr. Nass asked if this rule applies to both traditionally financed and MCEA candidates. Mr. Wayne stated it did. Mr. Nass asked whether the term “an individual” meant a single individual or whether it could mean more than one individual. Mr. Nass asked if their interpretation was that three people could buy food. Ms. Matheson and Ms. Lowry agreed. Mr. Nass stated his concerns were related to the circumstances of Rep. Chipman case. Mr. Pattershall said the last sentence clarifies the issue with respect to the cost of the invitations. Ms. Matheson agreed. Ms. Gardiner pointed out that the addition of “may not be shared” provides even more clarity that only one person can pay for the invitations.

Ms. Matheson made a motion to finally adopt Chapter 1, section 6(11). Mr. Nass seconded the motion. Motion passed (5-0).

Ms. Matheson stated she would like to have a discussion at a future meeting about the 24-hour reporting period and would like to see some alternatives to the current reporting requirement. The Commission discussed various interpretations of the statute and its applicability to candidates and committees. The Commission requested that the staff develop some alternatives for consideration at the Commission’s next meeting.

Mr. Pattershall made a motion, seconded by Mr. Nass, to adjourn. The motion passed. The meeting adjourned at 12:38 p.m.

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