



Minutes of the September 26, 2018 Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

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

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

Mr. Lee convened the meeting at 9:00 a.m. Mr. Lee said that Representative Lawrence had requested that his agenda item be taken out of order and heard first. He said he polled the other Commissioners and all agreed to the request. Representative Lawrence attended the meeting by telephone.

2. Request for Waiver of Late-Filing Penalty – Rep. Mark Lawrence

Mr. Wayne said Representative Mark Lawrence is a Maine Clean Election Act candidate for State Senate, District 35. His campaign filed the 11-Day Pre-Primary Report on time on June 1st, but the report disclosed no expenditures or debts. However, the campaign manager had made six expenditures totaling \$1,641 during the reporting period. The treasurer, James Mundy, did not understand that these expenditures needed to be in the report even though the campaign had not yet reimbursed the campaign manager. It is unclear to the staff whether Mr. Mundy knew about the expenditures prior to the filing of the 11-Day Pre-Primary Report. However, he did have the information about the expenditures when he was filing the next report in July. He entered the expenditures into the e-filing system and filed an amended 11-Day Pre-Primary Report on July 24th. The original report is considered 53 days late because it did not substantially conform to the reporting requirements. The preliminary penalty is \$1,739.73. The campaign requested a waiver of the penalty. The staff recommended reducing the penalty to \$400.

In response to a question from Mr. Lee, Candidate Registrar Emma Burke said that the campaign manager had used her personal funds to make the purchases.

Rep. Lawrence spoke to the Commission. He said he agreed with the staff's recommended penalty reduction. He said he takes full responsibility for not explaining how to report expenditures to the campaign manager and treasurer.

Mr. Nass made a motion to adopt the staff recommendation and set the fine at \$400. Mr. Lee seconded. The motion passed (4-0).

The Commission resumed the order of business on the agenda.

1. Ratification of Minutes of July 25, 2018 Meeting

Mr. Lee made a motion to adopt the minutes as presented. Mr. Pattershall seconded. The motion passed (4-0).

3. Request for Waiver of Late-Filing Penalty – Hon. Mark Eves

Mr. Lee said Ms. Lowry had informed him she would recuse herself from considering this matter because she had made a contribution to the Eves campaign. Ms. Lowry left the meeting room.

Mr. Wayne said Mark Eves was a candidate for the Democratic party nomination for Governor in the June 12th primary election. His campaign did not file two 24-Hour Reports on time because the campaign's media consultant did not tell the campaign the estimated amount of two debts in a timely fashion. The campaign had sent an email instructing the consultant to inform the campaign if it had made any expenditures of \$1,000 or more during the 24-hour reporting period. However, the consultant did not provide the amounts of the expenditures to the campaign until June 12th. The two debts were over \$1,000 each and should have been reported on June 2nd and June 5th, respectively. The combined preliminary penalty is \$1,378.70. The campaign requested a waiver of the penalty because the campaign made a bona fide effort to comply with the reporting requirements and the amount of the penalty is disproportionate to the amount of the financial activity in the reports. The Commission staff recommended reducing the penalty to \$500.

Mr. Lee said he was troubled by the situation confronting a candidate who places an order but is not able to get from the vendor the information necessary to file the 24-Hour Report. Mr. Wayne said the situation can be challenging for candidates, but the expectation is that a candidate should understand the reporting requirement and press the vendor for an estimated amount.

Mr. Wayne explained that beginning on May 30th, any expenditure or debt of \$1,000 or more should be in a 24-Hour Report; any expenditure or debt regardless of amount made or incurred on or before May 29th should be in the 11-Day Pre-Primary Report.

In response to a question from Mr. Lee, Mr. Wayne said it was a regular occurrence for a filer to use an estimate from a vendor when reporting debt, especially for independent expenditures. Mr.

Pattershall said the rules are clear that the onus is on the candidate to find out when an expenditure is made and the amount of the expenditure.

Mr. Nass made a motion to find a violation of the 24-hour reporting rule and impose the staff recommendation of a civil penalty of \$500. Mr. Pattershall seconded. The motion passed (3-0; Ms. Lowry had recused herself.).

Ms. Lowry rejoined the meeting.

4. Request for Waiver of Late-Filing Penalty – Hon. John L. Tuttle, Jr.

Mr. Wayne said John L. Tuttle, Jr., is a Maine Clean Election Act candidate for Senate District 33. He was required to file the 42-Day Post-Primary Report by July 24th. His treasurer, Joseph Hanslip, knew the report was due and called Candidate Registrar Emma Burke on the day of deadline to ask some routine questions. He attempted to file the report that evening around 10:00 p.m., but he was not able to log into the e-filing system after several attempts. Mr. Hanslip called Ms. Burke the next morning for assistance. She found that Mr. Hanslip was not using the correct password. The report was filed one day late and the preliminary penalty is \$432. The staff recommended a reduction of the penalty to \$250 because the treasurer made a bona fide attempt to file the report on time and would have filed the report had he used the correct password.

John L. Tuttle, Jr., appeared before the Commission and read a statement (attached) from Mr. Hanslip regarding the late filing of the 42-Day Post-Primary Report. Mr. Tuttle said he was in agreement with the staff recommendation.

Mr. Nass made a motion to adopt the staff recommendation of \$250. Ms. Lowry seconded. The motion passed (4-0).

5. Administrative Issue – Certification by Lobbyists of Harassment Training

Mr. Wayne updated the Commission on a new requirement for lobbyists which the Commission will be monitoring. Earlier this year, the Legislature enacted a new law requiring Legislators, legislative staff, and lobbyists to complete an in-person educational course and training on harassment, including sexual harassment, at the beginning of each regular legislative session. Lobbyists will be required to certify when they register with the Commission that they have taken the training. The new law will go into effect on December 13, 2018. Mr. Wayne said the

staff is working with the IT developer to include the new certification requirement in the online registration process.

Mr. Wayne said the law allows lobbyists to request an exemption from the requirement because they will have a “limited physical presence” in the State House or Cross Office Building. The law does not define “limited physical presence.” The staff requested input from lobbyists about how this should be interpreted, but only one lobbyist provided a substantive comment. The staff proposed that “limited physical presence” be interpreted to mean the lobbyist would be in those buildings no more than four days during a legislative session. Mr. Wayne said there may be one or two dozen lobbyists – mostly from out-of-state – to whom the exemption would apply.

Mr. Lee said the staff’s proposal seems reasonable. Ms. Lowry added that as this new requirement is implemented, adjustments could be made as necessary.

Michael Carey, Esq., appeared before the Commission. He said he is a former Legislator and an attorney but was speaking as a member of the public, not on behalf of a client. He said he was supportive of the law but wanted to call to the Commission’s attention the possibility that events may unfold during a legislative session that require an exempt lobbyist to spend more time at the State House or the Cross Office Building than anticipated when they registered. Depending on when the lobbyist exceeded the four-day threshold, there may be no trainings scheduled for the remainder of the session.

Mr. Wayne said the staff will update the Commission on plans to implement this new certification requirement for lobbyists.

Other Business:

In response to a question from Ms. Lowry, Mr. Wayne said that many of the funding issues that had preoccupied the staff in the late spring and early summer seem to be resolved and the staff is able to make payments to candidates.

With respect to the e-filing system, Mr. Wayne said the new system has been used for two reports by candidates and committees. There have been some quality issues; however, they are being addressed as quickly as possible.

Mr. Nass inquired about the termination of support services by DAFS. Mr. Wayne said it has caused much concern among the staff. He said he requested that the DAFS Commissioner reconsider the decision to cut off services and he declined. Mr. Wayne and the Assistant

Director met with the Commissioner and requested a phased-in approach rather than a complete and immediate termination. The Commissioner agreed to allow DAFS personnel to continue to provide support services unrelated to MCEA payments to candidates. The Commission staff would handle all payments to candidates and related functions. The remaining administrative functions will be transferred to the Commission staff after the November election.

Ms. Lowry made a motion to adjourn. Mr. Pattershall seconded. The motion passed (4-0).

The meeting adjourned at 10:37 a.m.

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