



Minutes of the October 1, 2015, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

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

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

Commissioner McKee convened the meeting at 1:30 p.m.

The Commission considered the following items:

1. Ratification of Minutes of July 23, 2015 Meeting

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

2. Request for Waiver of Late-Filing Penalties – Campaign for Maine PAC

Mr. Wayne explained that the Campaign for Maine PAC was initially organized in 2010 and reactivated in 2014 to support Eliot Cutler's gubernatorial campaign. In 2014, the PAC bought advertising to support Mr. Cutler and filed all reports in a timely manner with the exception of a report for an October 29th purchase of \$25,000 of television advertising that should have been reported in an independent expenditure (IE) report on October 30th. The PAC also failed to report this expenditure in the 42-day post-general report. The discrepancy was not discovered until July 2015 when the PAC was in the process of shutting down. The PAC filed the IE report and amended the 42-day post-general report; however, both were filed late. The staff recommended a penalty of \$1,250. James Kilbreth, Esq., who was not able to be present at the meeting, submitted a letter requesting a waiver of the penalties due to the inexperience and lack of sophistication of Ms. Catherine Stockly, a volunteer for the PAC, who was responsible for filing these reports. The payment for the television advertising was made by wire transfer by someone other than Ms. Stockly, who was responsible for making payments by check.

Mr. McKee asked if the PAC was in agreement with the staff recommendation and Mr. Wayne affirmed they are. Mr. Healy asked what Ms. Stockly's position was in the PAC. Mr. Wayne responded that it was his understanding that she was a volunteer who undertook management of the day-to-day activities of the PAC, including the filing of campaign finance reports, after the campaign manager resigned in July 2014. Mr. Nass said that he could not accept Mr. Kilbreth's argument that this PAC, which was supporting a major gubernatorial candidate, was lacking in sophistication. Mr. Nass asked whether campaign funds could be used to pay any penalties assessed. Mr. Wayne confirmed that they could. Mr. Nass stated that he would be inclined to fine the PAC the \$1,900 remaining in their account. Mr. McKee stated that he had concerns with proportionality and wanted to be sure the Commission was not doing anything too differently from past enforcement matters, but there were enough aggravating and mitigating circumstances to support either the staff recommendation or imposing a fine for \$1,900.

Mr. Nass made a motion to find violations for a late filed IE report and a late post-election report and to assess a combined penalty of \$1,900. Mr. McKee clarified that Mr. Nass was recommending a penalty of \$1,000 for the late filed IE report and \$900 for the late filed post-election report. Mr. Duchette seconded this motion. Ms. Matheson expressed concern about the timing of the departure of Betsy Smith, the campaign manager, and stated she would be more comfortable with the staff recommendation and would oppose the motion. Mr. Healy expressed concern that Ms. Stockly's affidavit in the IE report was factually incorrect, which is a very serious issue, but recognized this issue was not before them and stated he would support the motion. Motion passed (4-1); Ms. Matheson opposed the motion.

3. Request for Waiver of Late-Filing Penalty – Progressive Kick IE PAC

Mr. Wayne stated that Progressive Kick IE PAC is a progressive super PAC that is active nationwide. On October 23, 2014, the PAC purchased \$8,000 in advertising opposing the re-election of Governor Paul LePage. It was required to file an IE report on October 24th, which it did not do. Instead, the expenditure was listed in a 24-hour report that was filed on time. The staff recommended a penalty of \$250 because the expenditure was reported on time but in the wrong report, which is consistent with past practices.

Kate Knox was present on behalf of the PAC. Ms. Matheson questioned the level of sophistication of the organization. Ms. Knox stated this is a relatively sophisticated organization but it has not been very active in Maine. She stated the organization had done enough research to be aware of the deadlines and meet them, but the person filing the report failed to click a box resulting in the wrong report being filed. She stated that, given the circumstances and past practices, the PAC believed a penalty of \$250 was fair.

Ms. Matheson made a motion to find a violation and assess a penalty of \$250. Mr. Nass seconded the motion. Motion passed (5-0).

4. Request for Waiver of Late-Filing Penalty – Lobbyist Megan Sanborn (*WITHDRAWN*)

Megan Sanborn, a lobbyist for the Maine Association of Realtors, was one day late filing a monthly lobbyist report due on July 15, 2015. Ms. Sanborn initially requested a waiver of the \$50 penalty for late filing but later withdrew her request.

5. Request for Waiver of Late-Filing Penalty – Frank Stanley

Mr. Wayne stated that Mr. Stanley was a traditionally financed candidate in 2014. After the election, Mr. Stanley had funds remaining in his account and did file the 42-day post-general report; he was five days late filing the July semiannual report. Staff made multiple attempts to contact Mr. Stanley prior to the deadline. Mr. Stanley stated to the staff that he had been unaware of the necessity to file another report and consequently filed it five days late. Mr. Stanley had made a \$449 donation to the Hancock County Republican Women's Club at the end of December 2014 and assumed he no longer had to file any campaign finance reports. This is Mr. Stanley's third violation and staff recommends a fine of \$112. Mr. Stanley, who was not present, submitted a request for a waiver because he is currently unemployed and paying a fine would cause a financial hardship.

Mr. Healy asked if he had won or lost the election, stating that there is less public impact if he was not in office. Mr. Wayne stated there is always some public interest in financial disclosures but agreed there would be less interest for someone not actually in office. Ms. Matheson asked how much of a balance was remaining in his account. Mr. Wayne stated that it appeared that he had attempted to zero out his campaign account with the donation to the Women's Club but

made a \$40 error. Mr. Duchette asked whether the donation had been confirmed. Mr. Wayne stated that staff does not normally confirm donations but it could follow-up if necessary. Mr. Nass asked if Mr. Stanley could use any remaining funds to pay fines, which Mr. Wayne confirmed he could.

Mr. Duchette made a motion to find a violation and assess a penalty of \$112 penalty. Mr. Nass seconded the motion. Motion passed (5-0).

6. Proposed Legislation – Improving Disclosure of Contributions to PACs

Mr. Wayne stated the intent of this proposed legislation is to strengthen the disclosure requirements to identify donors who make large contributions to influence elections in Maine. Mr. Wayne stated that historic amounts were spent in the last election but, in many cases, the actual donors to large organizations active in the election were not identified. He stated that the proposed bill has been submitted to the Legislature due to filing deadlines but could be withdrawn if the Commission does not want to pursue this issue.

Mr. McKee asked if any input has been received from any organizations or Legislators. Mr. Wayne stated that he has had discussions with various interested parties. While they have acknowledged the intention behind the proposed bill, they have expressed concerns about potential negative impact on local groups in Maine seeking contributions from national groups because those national organizations would now have reporting obligations to the State of Maine. Mr. Duchette questioned how this disclosure would work and how would the organization decide which donors to report. Mr. Wayne stated that a standard for making that determination already exists but this proposal strengthens the disclosure requirements.

Mr. Healy stated that a donor could make donation to a national organization with no strings attached, that national organization could make a contribution to a Maine organization and the donor could find themselves listed on a donor list for the Maine organization. He stated that he did not believe the donor should be disclosed as they made their donation with no strings attached to the national organization.

Mr. Nass stated that he is absolutely opposed to this proposal and expressed his concern about the potential negative impact on small local organizations that are not normally political but do sometimes make contributions to relevant political issues. He stated that he understood the importance of disclosure to the public but believes that the public should focus on the political issue rather than the funding source.

Ms. Knox stated that she had talked with Mr. Wayne about this proposal and then had had several conversations with some local and national groups. She stated that the national organizations, such as the Democratic Governors' Association or Emily's List, are more comfortable with this because they know that their donors are giving them money specifically for the purpose of influencing elections. She stated there is more tension or concern among the smaller organizations, similar to the example Commissioner Nass described, about disclosing their donors and the potential administrative burden on them. The organizations are worried that could have a chilling effect on donors who may support the general mission of the organization with their donation but who do not want to be associated with a political campaign. Mr. Healy stated that if the local organization was very specific in their fundraising, they could avoid this problem. Ms. Knox agreed and stated that would be the best case scenario but problems arise when an organization decides to participate in an election at the last minute without planning to do so ahead of time.

Mr. Healy asked if other states require this type of disclosure. Mr. Wayne stated he had studied California and Massachusetts and based this proposed legislation on the laws in those states. He said other states are also experiencing this problem and have begun to require disclosure of the top donors.

Mr. Nass raised the issue of the disclosure of the NOM donors and being surprised at some of the names, such as the Knights of Columbus, but did not see how that was relevant to how a person voted. Ms. Knox responded that, while she understood Commissioner Nass' point, it would have been helpful at the time of campaign, to know who was actually contributing to the organization spearheading the people's veto given that it claimed to be primarily supported by Maine voters.

Mr. Healy stated that small businesses might be less inclined to make a donation if they knew they were going to appear on a contributor list in a campaign finance report because they might be concerned about a potential negative impact on their business. Mr. Healy stated that he has no problem with the legislation going forward but is not fully supportive of all parts of this proposal.

Ms. Matheson stated she believed this is worthy of public discussion at the Legislature. She stated that she believes a carefully worded disclaimer on any solicitation could impede donor disclosure and it would be good to avert that if possible, but she is not sure this bill is the way to do it.

Mr. Nass stated that he believes this is absolutely wrong and violates the donor's free speech rights to force the disclosure of their contributions. He stated the most important thing in any election is the candidate and the issue, not who is giving the money. Mr. Nass stated he is not looking to roll back disclosure provisions, but he does not believe this is the way forward.

Mr. Wayne stated that if the Commission is not comfortable with this proposal, it would be withdrawn or he could draft a report to go with the legislation to raise the Commissioners' concerns or it could be tabled until the November meeting. Mr. McKee stated that he wanted the bill to go forward but with a report documenting that not all of the Commission supports this proposal. Mr. Healy stated that if this motion were made, he would support it.

Mr. Nass asked if there was a policy prohibiting a Commissioner from attending a public hearing and making a statement of opposition on the proposed bill. Mr. Healy stated, and Ms. Matheson agreed, that any Commissioner is free to show up and express his or her opinion. Ms. Matheson stated she would support the proposal. She is not sure this is the way forward, but it should definitely be discussed by the Legislature.

Mr. McKee made a motion to allow the proposed bill to go forward to the Legislature as written, accompanied by a report by the Executive Director that contains the opinions of the Commissioners as expressed at this meeting. Mr. Duchette seconded the motion. Motion passed (4-1); Mr. Nass opposed the motion.

7. Proposed Legislation – Simplifying the Filing of Independent Expenditure and 24-Hour Reports

Mr. Wayne stated the intent of the proposed legislation is to clarify reporting requirements and potentially reduce the administrative burden for PACs, party committees and ballot question committees (BQCs) in the last 13 days of a campaign. The confusion stems from the similarity between the 24-hour report and the independent expenditure report. The 24-hour reporting requirement applies to any expenditure by a PAC, party committee, or BQC greater than \$1,000 made within the last 13 days before an election. The organization must file a report within 24 hours of the expenditure, even on weekends. The independent expenditure reporting requirement applies to paid communications advocating for or against a candidates. Similarly, in the last 13 days of an election cycle, this report is due within one (1) day, even on the weekend. The proposed legislation would focus the 24-hour reporting requirement on expenditures on paid communications to influence a ballot question, polling and contributions over \$1,000 made by a PAC, party committee or BQC. In addition, the proposed legislation would remove the requirement for a sworn affidavit for the IE report, replacing with an on-line acknowledgement requirement.

Mr. Wayne stated that a downside of this proposed legislation is a potential lessening of disclosure to the public and this consideration could be raised with the Legislature. Mr. McKee questioned if the confusion that exists now is significant enough to warrant a reduction of disclosure to the public. Mr. Wayne stated that he believed the impact would be slight because there are not a lot of 24-hour reports filed especially as related to candidate elections. Mr. McKee stated that in federal court, people are only required to file a declaration with their typed name. Mr. Healy asked if this was as enforceable as a sworn affidavit. Mr. McKee stated people would need to understand that the on-line acknowledgement was as enforceable as a sworn affidavit. Ms. Matheson expressed concern that people could share their log-in information and that eliminating the affidavit could make enforcement harder; however, she intended to support the bill. Mr. McKee stated that there is a presumption that when you sign your name to something you are responsible for what you are signing.

Mr. Healy made a motion to approve the proposed legislation as written by staff. Mr. Duchette seconded the motion. Motion passed (5-0).

8. Summary of 2015 Citizen Initiative

Mr. Wayne stated this summary is for informational purposes only. If passed, this legislation will:

1. increase penalties for non-compliance with campaign laws;
2. strengthen the Maine Clean Election Act by allowing candidates to qualify for additional funds;
3. require groups paying for communications to the voters to list the top three donors in the communication;
4. require a group that is fundraising and spending for a gubernatorial transition and/or inauguration to register with the Commission and file two financial reports so the public knows how much is being raised and spent in connection with the transition and inauguration; and
5. increase the time periods for independent expenditure reporting.

Mr. McKee made a motion, seconded by Mr. Healy, to adjourn. The motion passed. The meeting adjourned at 3:00 p.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director