



Minutes of the November 28, 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, Esq.; Bradford A. Pattershall, Esq.

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

Mr. Lee convened the meeting at 9:02 a.m.

**1. Ratification of Minutes of August 16, August 29 and September 26, 2018 Meetings**

Mr. Nass moved to adopt the minutes as drafted. Mr. Pattershall seconded. The motion passed (4-0).

**2. Request for Waiver of Late-Filing Penalty – Hon. Dana Dow**

Mr. Wayne said that neither Senator Dow nor Bruce Metrick, his treasurer, were present at the meeting. Mr. Wayne explained that Senator Dow made a payment of \$5,796.45 on October 27<sup>th</sup> to Spectrum Marketing for mailhouse services. He was required to file a 24-Hour Report by 11:59 p.m. on October 28<sup>th</sup>. The report was not filed until the next day, October 29<sup>th</sup>. Senator Dow requested a waiver of the penalty and Mr. Metrick submitted an email explaining the circumstances of the late-filing. In his response, Mr. Metrick stated he was not aware of the requirement to file a 24-Hour Report. In the three election cycles in which he has served as a candidate's treasurer, he never had to file one. Mr. Wayne said the preliminary penalty is \$115.93. Sen. Dow requested a waiver due to the inexperience of his treasurer in filing 24-Hour Reports. Because the preliminary penalty is less than the standard penalty for a late-filed 24-Hour Report, Mr. Wayne said the staff did not recommend a waiver or reduction.

Mr. Nass asked whether the staff has enhanced the notifications sent to candidates about the 24-hour reporting period. Mr. Wayne said the staff has increased its efforts to provide notice and sends email notifications and reminders by U.S. Mail to candidates. In addition, there is a notice about the 24-hour reporting period prominently displayed on the candidate's home page in the e-filing system.

Mr. Lee made a motion to adopt the penalty recommendation of the staff which is the statutorily calculated penalty of \$115.93. Ms. Lowry seconded. The motion passed (4-0).

### **3. Complaint Alleging Disclaimer Violation – Hon. Patricia Hymanson**

Mr. Wayne said that former Representative Bradley Moulton brought this complaint against Representative Patricia Hymanson. Mr. Moulton and Representative Hymanson were opponents in the November general election for House District 4. The complaint alleged that one of the pieces of campaign literature Rep. Hymanson was passing out as she campaigned door-to-door did not have the disclosure statement stating who paid for and authorized the campaign literature. Mr. Wayne said Mr. Moulton and Rep. Hymanson were present at the meeting.

Mr. Lee asked what the staff advice would be if the two pieces of paper were stapled together. Mr. Wayne said the staff does not have formal advice for that particular situation, but would likely advise the candidate that as long as the disclosure statement was on one piece, the requirement would be met.

Mr. Lee said one question before the Commission is whether there is one communication or two separate communications. Mr. Nass noted that if the two communications get separated – which is a common occurrence – then one communication may be distributed without the disclosure statement. Candidates would be well advised to put the disclosure statement on every page.

Bradley S. Moulton appeared before the Commission. He stated that his usual practice is to place a disclosure statement on each page of any communication he disseminates. He said he does so in order to prevent the kind of problem the Commission is dealing with in this matter. If someone were to photocopy only one page of his handbill, there would be no doubt that he was responsible for the content of the communication.

Mr. Pattershall asked whether he was aware of the page without the disclosure statement being distributed separately from the other communication. Mr. Moulton said he was not aware of any such occurrences.

In response to a question from Mr. Pattershall, Mr. Wayne said that Representative Hymanson reported the expenditures for each page of the communication separately. Mr. Pattershall noted that the wording in the statute – 21-A M.R.S.A. § 1014 – refers to an expenditure for a communication as the trigger for requiring a disclosure statement. In this instance, there are two expenditures.

Representative Patricia Hymanson appeared before the Commission. She said she was the only person who distributed the communication while she was going door-to-door. The page with her voting record was folded and placed inside the color handbill which had the disclosure statement printed on it. She considered the combination to be a single communication and the page with her voting record was never given out separately.

In response to a question from Mr. Nass, Rep. Hymanson said only the color handbill was given to the York County Democratic Committee to be available at the committee's headquarters, not the page with her voting record.

Responding to a question from Mr. Lee regarding the interpretation of the statute, Ms. Gardiner said there could be multiple expenditures for different components of a single communication. For example, there could be an expenditure for lumber and an expenditure for signs to put up with the lumber, but there would be one communication. The fact that Rep. Hymanson made two separate expenditures to two vendors does not require the Commission to conclude that, under the statute, there were two separate communications.

Mr. Wayne said the staff can add a section in the candidate guidebook to advise candidates to include the disclosure statement on each piece of a printed communication if it is distributed in such a way that the pieces could be separated.

Ms. Gardiner said a concern may be raised that the Commission is requiring information to be included in a communication that takes up space on the printed page and may be an additional cost to the candidate. The Commission needed to balance the governmental interest being served by regulating the candidate's communications and the potential impact or burden on the candidate.

Mr. Lee asked the Commission staff to develop proposed guidance based on the discussion at the meeting and present that guidance at an upcoming meeting.

Mr. Lee moved to find no violation because under the circumstances presented this was a single communication. Ms. Lowry seconded.

Mr. Pattershall said he agreed with Ms. Gardiner's interpretation that there can be multiple expenditures for a single communication. He said if he had received Rep. Hymanson's flyer in his door, he would have considered it a single communication.

The motion passed (3-1, Mr. Nass opposed).

### **3. Complaint of Anonymous Flyers – Catherine Weeks, Waterville City Council**

Mr. Lee recused himself from consideration of this matter. He said he had no conflict of interest regarding this matter. However, he serves as the city solicitor for the City of Waterville and, if he were to participate in this matter, it is conceivable his participation may result in a conflict or the appearance of a conflict for him as city solicitor at some point in the future. To avoid that remote possibility, he said he would recuse himself and leave the Commission table.

Mr. Lee took a seat in the public area of the meeting room. Mr. Nass assumed the role of Chair for this matter.

Mr. Wayne said Ms. Weeks ran for Waterville City Council in Ward 1 and lost by two votes. Two days before the November election, a flyer was distributed by hand in her neighborhood. The flyer does not have a disclosure statement stating who paid for it. Mr. Wayne cautioned the Commission not to consider the content of the communication which is protected political speech under the First Amendment.

Catherine Weeks appeared before the Commission. She said the flyers were distributed at night throughout her entire neighborhood. She said she believed Colby College students distributed the flyers but was not able to obtain confirmation from Colby College. Ms. Weeks said she believed the flyer was the reason why she lost the election.

Julian Payne, a resident of Waterville, said the flyer probably cost more than \$200. He said the disclosure statement was omitted deliberately. He said he did not believe Michael Morris, Ms. Weeks' opponent, was behind the flyer, although it was distributed by someone who supported his candidacy.

Mark Andre, a resident of Waterville and candidate for House District 110 in the November 2018 general election, appeared before the Commission. Mr. Andre expressed his concerns that the students in the new Colby College dormitory in downtown Waterville were providing in-kind contributions to political candidates by canvassing for them and conducting other activities.

Mr. Nass acknowledged Mr. Andre's concern but said that it was only barely related to the matter before the Commission.

Mr. Pattershall suggested that Mr. Andre come back to the Commission, possibly in the next election cycle, with an actual incident that supports his allegations of in-kind contributions to candidates. He said the standard is there must be sufficient grounds to believe a violation may

have occurred and the person bringing the complaint must provide enough factual information to the Commission for that standard to be met.

Mr. Nass moved to accept the staff recommendation and find there is no reason for an investigation in this matter. Ms. Lowry seconded. The motion passed (3-0, Mr. Lee had recused himself from consideration of this matter).

Mr. Lee rejoined the other Commissioners and resumed conducting the meeting as Chair.

#### **4. Request to Investigate Receipt of Sign Materials – Hon. Seth A. Berry**

Mr. Wayne said Alex Titcomb requested an investigation into whether Representative Seth Berry received in-kind contributions in the form of materials for campaign signs. Mr. Titcomb was not able to attend the meeting because of his work schedule. In his response, Representative Berry said he made an expenditure with Maine Clean Election Act funds for lumber and had signs from previous elections that he was able to re-use to repair and replace the signs that had been destroyed or removed. From the staff's perspective, Mr. Wayne said Mr. Titcomb has not presented sufficient information to believe that a violation may have occurred and the staff recommended no investigation.

In response to a question from Mr. Nass, Mr. Wayne said the staff has advised candidates to pay a reasonable fee for the use of wire wickets in order to avoid accepting an in-kind contribution.

Representative Seth Berry appeared before the Commission. He said he has run for office five times before and has plenty of leftover signs. In the early morning hours on Columbus Day, a number of his signs in Bowdoinham and Bowdoin were taken down or destroyed. Because he was a Maine Clean Election Act candidate and had limited funds remaining at that point in the election, he did not have a lot of campaign funds left to purchase new signs. Using a minimal amount of newly purchased lumber, he was able to repair many of the wooden signs. He did not accept a truckload of old campaign signs from another candidate as Mr. Titcomb alleged.

Instead, he suggested that the Bowdoinham Democratic Town Committee take the old signs, which it did. Rep. Berry rented about 50 wire wickets from the committee at 25 cents per wicket. He did not accept any in-kind contributions as the complaint alleged.

Mr. Nass moved to accept the staff recommendation and find there are insufficient grounds to support a request to investigate for a possible violation. Mr. Pattershall seconded. The motion passed (4-0).

Mr. Nass moved to adjourn. Mr. Pattershall seconded. The motion passed (4-0).

The meeting adjourned at 11:33 a.m.

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