



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

Minutes of the June 15, 2009, Meeting of the  
Commission on Governmental Ethics and Election Practices  
Held in the PUC Hearing Room, PUC Building,  
242 State Street, Augusta, Maine

Present: Michael Friedman, Esq., Chair; Walter F. McKee, Esq.; Hon. Edward M. Youngblood; Hon. Francis C. Marsano; and Hon. Mavourneen Thompson by phone; Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 1:00 p.m., Chair Michael Friedman convened the meeting. The Commission considered the following item:

**Agenda Item #1. Proposed Amendments to Commission Rules**

Mr. Wayne explained that since the packets were mailed out to the Commission members, three of the bills being discussed have been assigned chapter numbers:

L.D. 1197, Chapter 286

L.D. 1016, Chapter 190

L.D. 1380, Chapter 363 (emergency legislation)

L.D. 923 (Resolve), Chapter 128

He said some of the proposed changes to the rules reflect newly enacted legislation; some are ideas from the staff; and some are suggestions by Mr. Marsano.

Mr. Marsano asked for further explanation regarding the staff's proposed amendment for Chapter 3, Section 4(4) under which MCEA expenditure guidelines would not apply to purchases made with traditional campaign contributions, which MCEA candidates may be allowed to raise if there were insufficient funds in the Maine Clean Election Fund.

Mr. Wayne explained that traditionally funded candidates have a great deal of flexibility in spending their campaign funds. He said there are no expenditure restrictions in place for traditionally funded campaigns.

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However, he said, the Maine Clean Election Act directs the Commission to adopt guidelines and restrictions as to how public funds are to be used. In the event that MCEA funds are not sufficient to fully pay MCEA candidates and the Commission permits MCEA candidates to raise private contributions, it would be advisable to have guidance in the rules as to how MCEA candidates are allowed to use those funds. Mr. Wayne said there are several arguments for and against making a change in applicability of the guidelines. On one hand, he said that if an MCEA candidate has made the effort to raise the traditional funds, then they should have the same flexibility with expenditures as the traditionally financed candidates have. On the other hand, he said if private and public funds were commingled, it would be difficult to determine which funds were private and which were public.

Mr. Youngblood said it would seem logical if both types of funds were commingled, then all funds would need to conform to the guidelines. However, he said a separate bookkeeping system could be set up to show the funds are completely separate, and therefore would not require any restrictions on the use of private funds.

Mr. Marsano said that the question before them is what the wording of the amendment should be when it goes out for public comment. He said he would support a proposed rule that made the MCEA expenditure guidelines applicable to expenditures made with traditional contributions. He said that if a candidate signs on as an MCEA candidate and that identification is beneficial to the candidate, then they should stick with that identification throughout the campaign, even if the rule requires that public and private funds be accounted for separately.

Mr. Wayne suggested the wording could be that the guidelines “will apply to spending of contributions authorized under this subsection.” He also said that the Commission could add language that would make an exception to the guidelines if the private funds were kept separate from MCEA funds.

Mr. Marsano said that he thought the proposed rule should go out for comment stating that the guidelines will apply to expenditures made with private funds, but suggested that there also be caveat which might be addressed by those commenting on the proposed rule.

Mr. Friedman said that the proposed rule should go out stating that the guidelines will apply to all funds spent by an MCEA candidate but there should also be a clarification or caveat regarding the alternatives.

Mr. Marsano recommended a word change in Chapter 1, Section 6(7)(C): from “deemed to be made in the general election” to “deemed to be made for the general election.”

Mr. Marsano raised an issue regarding gifts to minors in the new section, Chapter 1, Section 6(8). He said that the phrase, “or a gift not excluded by paragraph C,” should be added at the end of paragraph B in order to clarify that contributions may be made from a gift as long as the gift was not made with the purpose of having the minor contribute it to a candidate. He also suggested adding the phrase “to a candidate” in paragraph C after the word “contributed.”

Mr. Marsano questioned the inclusion of the word “intentionally” in two places in the proposed change to Chapter 1, Section 12(2) regarding contributions to political committees in which Legislators and other governmental officials play a significant role. He said that P.L. 2009, Chapter 286 (L.D. 1197) did not have the word “intentionally” in it and that the proposed rule would be more faithful to the statute if it were eliminated. Mr. Wayne agreed.

Mr. Youngblood commented on Chapter 3, Section 2(4)(F), regarding verification of voter registration of people making qualifying contributions online, saying that it appears that the Commission is taking on the role of making sure that the Central Voter Registration system is accurate.

Mr. Wayne explained the history of the online qualifying contribution system. He said that the intent of the proposed rule was for the Commission to develop a system that would alleviate the administrative burden on candidates by automating the verification of voter registration status of those people who made qualifying contributions online. The Commission staff and InforME, the state IT developers, are working on a system that would do that using Central Voter Registration data provided by the Secretary of State. He said that there was a possibility that the data in the system may not match up with the information input by the contributor. In that event, the candidate would still be required to have the town registrar verify the voter registration of that individual for that contribution to be valid. The Commission staff would not be maintaining the voter registration data in the system.

Ms. Gardiner suggested changing the wording to be clear that the Commission would have a system in place for the voter to verify their registration. If there is not a match, then the candidate would be responsible to getting the verification from the town.

Mr. Marsano raised several issues regarding the scheduling of Commission meetings and the notice provided to Commission members. He stated his concern that meetings to consider rule changes based on legislation be scheduled to occur after the Legislature has adjourned and it is certain that a bill cannot be recalled. Mr. Marsano said that he had written his suggested changes to Chapter 1, Section 3, regarding Commission meetings, in order to address the requirement that Commission members get notice of a meeting within 24 hours. He said that while the current rule permits telephonic notice if written notice is not feasible, it should also include fax and e-mail. He also said that he thought that the rule should be clear that the Chair is the person responsible for calling a meeting.

Mr. Friedman said that he thought that Mr. Marsano made some valid points, which deserve further discussion and that he was in favor of sending Mr. Marsano's changes out for public comment.

Ms. Gardiner made the observation that as the Commission considers these changes to the rule on meetings and notices, it may also want to take into account that requirements that it puts in the rule could become the basis for an argument that the Commission did not have the authority to act if the rule were not followed. She said that the Commission could have its own internal procedures to regulate the Commission's activities and those of the staff without putting those procedures into the rules.

Ms. Thompson said that there should be more discussion on the procedures under which Commission meeting are called and how the Commission members are notified about meetings.

Mr. McKee moved to send the proposed rule changes as amended out for public comment. Mr. Marsano seconded.

Motion passed unanimously (5-0).

There being no further business, Mr. McKee moved to adjourn. Mr. Youngblood seconded.

The motion passed unanimously (5-0).

Respectfully submitted,

Jonathan Wayne, Executive Director