



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

Minutes of the November 30, 2010, Meeting of the
Commission on Governmental Ethics and Election Practices
Held at the Commission Office, 45 Memorial Circle,
2nd Floor, Augusta, Maine

Present: Walter F. McKee, Esq., Chair; André G. Duchette, Esq.; Hon. Edward M. Youngblood; Margaret E. Matheson, Esq., Michael T. Healy, Esq. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 11:15 a.m., Chair Walter McKee convened the meeting.

The Commission considered the following items:

Agenda Item #1. Ratification of Minutes of the September 9 and 30, 2010 Meetings

Mr. Wayne explained that there was a small change to the September 30 minutes under agenda item #3 with regard to the audit findings for Senator Peter Mills' gubernatorial campaign to clarify that there was no finding of violation.

Ms. Matheson moved to accept the September 9 and September 30 minutes as amended. Mr. McKee seconded.

Motion passed unanimously (5-0).

Agenda Item #2. Request for Waiver of Late Filing Penalty/Campaign for Maine PAC

The Campaign for Maine political action committee (PAC) was required to file an independent expenditure report on Saturday, October 9, 2010. The PAC filed the report three days late on Tuesday, October 12, after the Columbus Day weekend. The preliminary penalty amount for the late filing is \$1,551.12. The PAC requested a waiver of the penalty in its letter dated November 1, 2010. Mr. Wayne explained that because of the four day weekend, even if the report had been received on time, it would not have been

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disclosed to the public until Tuesday, October 12. The public was not harmed by the late filing and there was no impact on the payment of matching funds to any candidate.

Mr. Healy recused himself from the consideration of this matter because the law firm with which he is affiliated is representing the PAC.

Jamie Kilbreth, Esq., counsel for the Campaign for Maine PAC, said there had been a discussion on Thursday, October 7, with Mr. Wayne regarding when the PAC should file its registration with the Commission because the PAC was beginning to raise and spend money. They were aware that the office would be closed due to Columbus Day and the shut down day on the preceding Friday and the PAC wanted to understand how that would affect filing a registration. The PAC wanted to be sure that if the registration were filed on Tuesday, it would be filed timely. The PAC was more focused on the registration requirement than on the independent expenditure report. He said when they reviewed the statute, it appeared that it is only after the registration is filed, that the obligation to file reports arises. He said the statute is confusing and unclear; however, they are willing to accept the staff recommendation.

Mr. McKee said the staff recommendation is substantially less than the preliminary penalty amount due to the lack of harm to the public.

Mr. Duchette requested the staff's opinion with respect to Mr. Kilbreth's claim that the statute is vague.

Mr. Wayne explained that the independent expenditure reporting requirement is separate from PAC reporting law. The requirement to file an independent expenditure report applies to anyone who spends money on a communication to voters that advocates for or against a candidate. Whether an entity is a registered PAC has no bearing on the obligation to file an independent expenditure report.

Ms. Matheson moved that the Commission accept the staff recommendation and assess a penalty of \$250. Mr. Youngblood seconded.

Motion passed unanimously (4-0).

Agenda Item #3. Consideration of Proposed Civil Penalties against Consultant Michael Dennehy

On June 7, 2010, about 7,000 Maine households received an automated telephone message asking whether candidate Paul LePage could be trusted on issues of moral values. The calls did not include a “disclaimer” statement disclosing the sponsor of the calls or whether the calls were authorized by a candidate. On June 11, 2010, the Commission received a request from Robert D. Stone of Lewiston to investigate who made the calls. In July 2010, as a result of a news article, a political consultant based in New Hampshire, Michael Dennehy, came forward and took responsibility for the calls. Mr. Wayne submitted some questions to Michael Mahoney, counsel for Mr. Dennehy, and received back a sworn affidavit. Mr. Wayne said Mr. Dennehy was employed by Les Otten’s campaign for Governor as a consultant and was paid \$33,000 for those services. He said the campaign also paid \$30,000 to Contact Services LLC in Grand Rapids, Michigan, which is the same company that made the robocalls in question. Mr. Wayne explained that Mr. Dennehy claimed in his affidavit that he arranged and initiated the calls on his own in response to a mailing that was sent out by the LePage campaign attacking Les Otten. Mr. Wayne said there seems to be no proof of such mailing from the LePage campaign. Mr. Dennehy said he received no authorization from the Otten campaign and acted on his own.

Mr. Wayne said the staff investigated further to be sure this was done independently of the Otten campaign. He said staff interviewed Mr. Dennehy and Edith Smith who was the Otten campaign manager and decided that the Otten campaign did not authorize this expenditure. Mr. Wayne said Ms. Smith was completely credible and was very convincing that the campaign knew nothing about these calls. Mr. Wayne stated that the penalty is too small relative to the violation, but the Commission is limited to the enforcement procedures and penalties in the statute.

Michael Mahoney, Esq., counsel for Michael Dennehy and the Dennehy Group, expressed his client’s regret over the event that happened on the eve of the primary in June. Mr. Mahoney stated that his client did come forward almost immediately upon learning about the Commission’s investigation and cooperated fully with the investigation. He said Mr. Dennehy agrees with and accepts the staff recommendation. However, Mr. Dennehy does not agree with the staff’s finding that there may not have been a negative attack mailer by Paul LePage’s campaign. He said Mr. Dennehy does recall a negative mailer and takes exception to the staff finding. Mr. Mahoney said Mr. Dennehy disagrees with the staff finding with regard

to his knowledge and disregard of the disclaimer requirement and indicated in his affidavit that he was not aware of the disclaimer requirement.

Mr. Healy pointed out Mr. Dennehy's affidavit states that he "caught wind" of a mailer and asked whether he actually saw the mailer.

Mr. Mahoney said he could not confirm the circumstances under which his client learned about the mailer.

Mr. Healy asked what Mr. Dennehy's role was for the Otten campaign and whether he was an agent for the campaign.

Mr. Mahoney said Mr. Dennehy was a senior member of the Otten campaign team and worked on campaign communications and for general campaign strategy.

Mr. Healy said Mr. Dennehy appeared to be a high level advisor of the campaign and one could conclude that he was an agent of the campaign.

Mr. Mahoney said with respect to this incident, Mr. Dennehy acted on his own.

Mr. Healy stated that, if Mr. Dennehy was an agent of the campaign, even though he did not clear the project or get pre-approval from the candidate, it should not mean the campaign is off the hook for these actions. The facts, however, are not sufficiently developed in this case to delve into questions of whether Mr. Dennehy acted beyond the scope of his agency.

Mr. Healy asked if Mr. Dennehy owned the company solely or if there were other owners.

Mr. Mahoney said he believed Mr. Dennehy owned the company alone.

Mr. Youngblood stated that it was difficult to believe an experienced company did not notice that the disclaimer was missing on these calls since they most likely provided other calls that did have it. He

expressed concern that the maximum fine is only \$200. He said it would be very easy for an entity to do this again, knowing that the fine will only be \$200 and assessed well after the election.

Joseph Greenier, concerned citizen from Stockton Springs, agreed with Mr. Youngblood. He expressed concern over this large sum of money being spent without any accountability. He said the law and fine associated with the violation of this statute needs to be strengthened.

Mr. McKee stated that Mr. Dennehy was lucky that the Commission does not have the authority to assess a larger penalty. He agreed that a change in statute may be in order for this type of violation.

Mr. Healy stated the resolution should be that campaigns are held responsible for the acts of their agents, regardless of whether there was authorization by the candidate.

Mr. Duchette asked if the Commission had the ability to apply the portion of 21-A M.R.S.A. § 1014(4) which referred to misrepresentation.

Mr. Wayne explained that after consulting with Commission's counsel, it was decided that this matter was not a case of misrepresentation, but an absence of representation.

Mr. Healy moved that the Commission accept the staff recommendation to assess a penalty of \$200 for the missing disclaimer which is the maximum permitted by statute and a \$74 penalty for late independent expenditure reporting. Mr. Youngblood seconded.

Motion passed unanimously (5-0).

Agenda Item #4. Request for Waiver of Late Filing Penalty/Stop Handgun Violence Action Fund
Stop Handgun Violence Action Fund is a PAC registered with the Commission. It was required to file an independent expenditure report on Saturday, October 23, to disclose a payment for a newspaper ad opposing Senate candidate Gerald Davis. The PAC filed a 24-Hour PAC Report on October 22 by mistake and should have filed an independent expenditure report. The independent expenditure was filed on Monday, October 25. The preliminary penalty amount for the late filing is \$11.34. The staff has no doubt

that Mr. Harwood acted completely in good faith and did intend to file the correct report. Mr. Harwood pointed out in his letter that the PAC has never made an independent expenditure before. The staff does not recommend a waiver or reduction of the penalty because the late report did delay matching funds to Sen. Davis.

Mr. McKee stated that he could see how this mistake could happen and acknowledged the PAC's good faith attempt to file. He said the other factor to consider was the delay in matching funds to a candidate.

Mr. Duchette asked if the staff was considering a change in the guidelines to make report filings clearer because that could affect the Commission's action on these issues.

Mr. Wayne said there were actions the staff could take to make the reporting obligations clearer, including the publication of the PAC Guidebook. He said also language could be added to the e-filing system to clarify whether an independent expenditure report should be filed instead of a 24-hour report.

Mr. Healy raised a concern about the cost effectiveness of an enforcement process for very minor penalty amounts such as in this case.

Mr. Youngblood stated there are many PACs who do it correctly and the bottom line is the report was late. He said if penalties are waived, the incentive to file is diminished. He said the fact that the late filed report resulted in a delayed matching funds payment to a candidate was not as important as the late filing itself.

Ms. Matheson agreed with Mr. Youngblood's point that a delayed matching funds payment should not outweigh the importance that reports are filed on time. She asked how many PACs incorrectly file and do not request waivers.

Mr. Wayne said 27 PACs and 5 party committees filed the independent expenditure report correctly and were able to distinguish between the 24-hour and independent expenditure reports. He said the three today were asking for a waiver because they filed the wrong form and there were several that filed late and just paid the penalty without requesting a waiver.

Mr. Youngblood moved that the Commission accept the staff recommendation and assess a penalty of \$11.34. Ms. Matheson seconded.

Motion passed unanimously (5-0).

Agenda Item #5. Request for Waiver of Late Filing Penalty/Sagadahoc County Dem. Committee

The Sagadahoc County Democratic Committee was required to file an independent expenditure report on October 23, 2010 and mistakenly filed a party committee 24-Hour Report. They filed the independent expenditure report eight days late which delayed matching fund payments to a candidate. The preliminary penalty amount for the late filing is \$142.80. Stephen Masters, the treasurer of the Sagadahoc County Democratic Committee, seeks a waiver of the late filing penalty because it made a good faith effort to file the correct report and the e-filing system does not provide instructions about independent expenditure report filing procedures.

Mr. McKee noted that the filing occurred only two days before the election.

Mr. Healy moved that the Commission accept the staff recommendation and assess a penalty of \$142.80.

Mr. Duchette seconded.

Motion passed unanimously (5-0).

Agenda Item #6. Request for Waiver of Late Filing Penalty/Robust Economy Maine PAC

The Robust Economy Maine PAC was required to file an independent expenditure report on October 17, 2010, because it purchased a direct mailing for \$3,100 in support of House candidate Paul Tessier and mistakenly filed a PAC 24-Hour Report. After the mistake was brought to the PAC's attention, it filed an independent expenditure report on October 30, 2010. The late report did not delay the payment of matching funds to Mr. Tessier's opponents, because their campaign receipts were significantly higher than his as of October 17. The preliminary penalty for the late report is \$403. The PAC requests a waiver because it made a bona fide effort to file the report on time.

Mr. Duchette said he was less concerned with the matching fund issue but more with the lateness. He said this was a significant expenditure that was made and felt a \$400 penalty was not out of line.

Mr. Youngblood wondered why there was such a long lapse in time before the Commission staff contacted the PAC.

Mr. Wayne explained that the last few weeks before the election this type of error was overlooked. He said when the filed 24 Hour reports were reviewed by staff, these few were picked up.

Mr. Healy asked why the two reports could not be combined into one. He said these organizations believed they were complying with the law.

Mr. Wayne said that independent expenditure reports have to be filed on paper; however, this could be reviewed in the future.

Mr. Duchette moved that the Commission find the Robust Economy Maine PAC in violation for failing to file an independent expenditure report on time and assess a penalty of \$200. Mr. Youngblood seconded.

Motion passed unanimously (5-0).

Agenda Item #7. Request for Waiver of Late Filing Penalty/Seacoast Democrats

The Seacoasts Democrats is a party committee that was required to file an 11-day pre-general report on October 22, 2010. The report was filed seven days late on October 29, after the committee received a communication from the Commission staff that the report was late. The preliminary penalty is \$408.52. The treasurer admits that she forgot about the filing deadline because the committee was very involved in the regional get out the vote effort.

In response to a question from Ms. Matheson, Cindy Sullivan, the Commission's PAC Registrar, said that the committee has been around for years but that the treasurer is new this year.

Mr. McKee said the amount was high for a small committee; however, the reason for not filing was a poor excuse.

Mr. Youngblood said over the years there has been a number of late committee reports that did not receive such a lenient reduction.

Mr. Wayne said in this instance the inexperience of the treasurer was a factor in the staff recommendation. It is not uncommon for small town committees to have new treasurers who are unfamiliar with the process.

Mr. Healy moved that the Commission find the committee in violation and assess a penalty of \$200. Ms. Matheson seconded.

Motion passed unanimously (5-0).

Agenda Item #8. Request for Waiver of Late Filing Penalty/Senator Lawrence Bliss

Senator Lawrence Bliss was required to file an 11-day pre-general report on Friday, October 22, 2010. The report was filed one day late, after Senator Bliss received a call from the Commission staff. The preliminary penalty amount is \$228.88. Senator Bliss requested a waiver of the penalty because a data entry error by the Commission staff contributed to the late filing.

Mr. McKee noted that the error was not discussed during the first call when the staff called to remind Senator Bliss about the report but only came up during the second call on that Saturday.

Mr. Wayne explained that the staff recommended a reduction of the penalty because the amount is high for a candidate to pay and Senator Bliss responded to the reminder call very quickly.

Mr. Duchette moved that the Commission accept the staff recommendation and assess a penalty of \$114.44. Mr. Healy seconded.

Motion passed unanimously (5-0).

Agenda Item #9. Request for Waiver of Late Filing Penalty/Eric Lusk

Eric Lusk was a candidate for State House of Representatives. He was required to file an 11-day pre-election report on Friday, October 22, 2010. He filed it one day late, after receiving a call from the Commission staff. The preliminary penalty amount is \$28.21. Mr. Lusk claims that he had completed the report but it did not get filed when he hit the "File Report" command in the e-filing system. Mr. Wayne explained that when the report is filed, an e-mail is generated to the candidate so they should know that the report has been filed correctly.

Mr. McKee stated that since this was not Mr. Lusk's first filing, he should know the process by now and realize the report did not get filed correctly at the time.

Mr. McKee moved that the Commission accept the staff recommendation and assess a penalty of \$28.21. Ms. Matheson seconded.

Motion passed unanimously (5-0).

Agenda Item #10. Audit Report of Primary Election Candidate

The Commission's auditor randomly selected Maine Clean Election Act candidates for the Legislature who lost their primary elections for an audit. In October 2010, the auditor completed his audit of the last remaining audit of a primary legislative candidate, Daniel L. Smiley. The auditor did not find any exceptions regarding Mr. Smiley's audit.

Other Business

Republican State Leadership Committee Update

Mr. Wayne said he sent a detailed questionnaire to Greg Engle, national counsel to the Republican State Leadership Committee to whom the Commission spoke by phone at the October 28 meeting. He said the questionnaire was designed to help the staff determine the dates on which various actions occurred in order to calculate how late the PAC was in filing its reports. He said Daniel Riley, Esq., from Bernstein Shur, had been obtained as local counsel for RSLC and he has not heard back from Mr. Riley as of November 23.

Cutler Files Update

Mr. Wayne said two interviews have been conducted with people who have some knowledge as to whom is responsible for the research on the website. The staff has requested an opportunity to interview Dan Billings' two clients, who are responsible for the website. One interview has been scheduled. The staff is still working on setting up the interview with the second person. He said there may be a need for a subpoena. He said the investigation has proceeded in a manner that gives the Commission the opportunity to keep the individuals involved anonymous if the Commission decides that is the right course of action. He said the subpoena process may be challenged by Mr. Billings in court.

Ms. Matheson moved to adjourn and Mr. Youngblood seconded.

Meeting adjourned at 12:45 p.m.

Respectfully submitted,

Jonathan Wayne, Executive Director