



Minutes of the December 18, 2020, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: William A. Lee III, Esq., Chair; David R. Hastings, Esq.; Meri N. Lowry; Dennis R. Marble; and William J. Schneider, Esq.

Staff: Jonathan Wayne, Executive Director; Phyllis Gardiner, Assistant Attorney General; and Michael Dunn, Political Committee and Lobbyist Registrar

Commissioner Lee convened the meeting at 9:09 a.m. The meeting was livestreamed via YouTube. The Commission considered the following items:

1. Ratification of Minutes of the October 30, 2020 Meeting

Mr. Hastings made a motion to adopt the Minutes as written. Ms. Lowry seconded the motion. Motion passed 5-0.

2. Public Hearing on Proposed Rule Amendment

Mr. Wayne said this proposed rule change was to address a policy question that the Commission staff believed was open to interpretation under the statute. The question was whether a candidate, who registered and accepted contributions as a traditionally financed candidate, could change their mind and run as an MCEA candidate. Under the proposed rule change, the candidate would be able to switch financing status, provided they returned all contributions that were not compliant with seed money restrictions and all their expenditures were compliant with seed money restrictions. He said the public can submit written comments on the proposed rule until January 5. The Commission would consider whether to provisionally adopt this proposal at its January meeting, and then, because this was a major substantive rule, the provisionally adopted rule would be submitted to the Legislature for final approval.

Mr. Lee asked what guidance the staff would give about disposing of the non-compliant contributions. Mr. Wayne said the primary guidance would be to return the contributions to the donors or donate it to a party committee or a PAC. If the Commissioners believed this should be addressed in the proposal, he would add that guidance. Mr. Lee said he believed it would be helpful to have more detail in the guidance about contributions and expenditures, so it was clear what was and was not acceptable before the candidate requested changing financing status.

In response to a question from Mr. Hastings about how a candidate could comply with the seed money restrictions, Mr. Wayne said the candidate would have to return all contributions received from PACs, businesses, and associations, as well as any amount over \$100 received from individuals. He said the remaining amount would have to be enough to pay for any expenditures made while the candidate was traditionally financed. Mr. Lee asked why not require the candidate to start over. He pointed out that some people may not be happy seeing their contribution, given to a traditionally financed candidate, now being used by that candidate to seek MCEA financing. Mr. Wayne said the staff did consider the option of having the candidate start over. However, if the candidate had already purchased campaign goods and services, the candidate may have an unfair advantage if they were allowed to spend more money than an MCEA candidate running for the same office.

Mr. Hastings said he believed the proposal was designed to not allow a candidate to switch to MCEA financing if they had spent more than was allowed by the seed money restrictions. Mr. Wayne said that was correct. Mr. Hastings said it was a pretty narrow window of opportunity and he did not believe a lot of candidates would take advantage of this process. Mr. Schneider agreed and said it might be cleaner policy to require that the candidate not have made any expenditures in order to be able to make the switch.

Mr. Marble said he still had concerns about this proposal. He believed anyone running for office would have planned out their campaign. He had a hard time understanding why someone would change those plans except in extreme circumstances, such as an office becoming available due to the death of an office holder. Mr. Hastings agreed and said just changing their mind seemed unlikely without a significant event occurring that altered the dynamics of a particular race. He said it would be simpler to just not allow this to happen. Ms. Lowry asked if there were any examples of this happening. Mr. Wayne said it did not happen often, but it had happened this year, which was what triggered this proposal.

Mr. Wayne asked if they would like him to provide them with several options for this proposal at their January meeting. Mr. Lee asked Ms. Gardiner if there would be a problem if they voted for something different than what was currently proposed at their January meeting. Ms. Gardiner said if the Commission made changes that made the rule substantially different from the originally proposed rule, they would have to put those changes out for public comment again. They could also withdraw the proposal and resubmit it. Mr. Lee asked whether the proposal would have to be put

out for public comment again if guidance about contributions and expenditures were to be added. Ms. Gardiner said she thought it was possible that adding that kind of specificity would not make the rule substantially different.

Ms. Lowry said she was comfortable with the proposed rule as written. She said the proposal put into writing a process the Commission staff had informally handled in the past. She said she was also comfortable with the staff having discretion to provide guidance about contributions and expenditures to candidates as needed.

Mr. Lee said it may be possible for the proposal to remain as written if the staff developed the guidance for their review. Mr. Wayne said the Commission staff could draft the language they would use in the candidate guidebook for their review if the Commissioners wanted to go forward with the proposal.

Mr. Marble said he had faith in the Commission staff, but he still had reservations about this proposal. Mr. Schneider said he believed they should address this situation; either prohibit it or enable it. Mr. Hastings said he agreed with Ms. Lowry and he was satisfied with the proposal as written.

Mr. Lee asked what motion they needed to make to move forward with this proposal. Ms. Gardiner said they did not need to make any motion because the proposal was open for public comment until January 5. She said when Mr. Wayne provided them with the guidance, they could go the extra step to provide that guidance to anyone who commented on the rule. She said they could make a judgment call whether to invite further comment or provisionally adopt the rule at their meeting in January. Mr. Lee said Mr. Wayne had provided a good explanation of the rule and would provide written guidance for their review. Mr. Lee said they would vote on this matter in January and closed the public hearing on the proposed rule.

3. Missing Disclosure on Election Signs – Steve Collins

Mr. Wayne said Tim Goodwin, a candidate for House District 23, contacted the Commission about some signs posted in Standish that did not have the disclosure statement of who had paid for and authorized them. He said a few of the signs had the name Steve Collins, the proprietor of a local store, handwritten on them. Emma Burke, Candidate Registrar, had contacted Mr. Collins, who acknowledged paying for the signs and had agreed to put his name on the signs. However, according to Mr. Goodwin, Mr. Collins did not add the information to the signs. Mr. Goodwin filed a complaint with the Commission about the signs and provided multiple pictures of the signs. Mr.

Wayne said he had spoken to and mailed letters to Mr. Collins to notify him of the possible violation and penalty. He said one of the letters was sent to Mr. Collins via FedEx and the staff received confirmation from FedEx that Mr. Collins had received the letter, which verified that Mr. Collins had adequate knowledge of the meeting. Mr. Wayne said Mr. Collins had informed him that he had no intention of participating in the meeting.

Timothy Goodwin appeared before the Commission. Mr. Goodwin said he believed there was a group of people who pooled their money to pay for the signs, but he did not have any evidence of that. Mr. Lee asked if he had any conversations with Mr. Collins about the signs. Mr. Goodwin said he had not.

Mr. Schneider said the staff had provided them with a survey of sign costs and there was evidence that the cost of the signs exceeded the minimum threshold for the exception under § 1014.

Ms. Lowry said she was satisfied with the staff recommendation and that there was enough evidence to make a finding of violation without further investigation and to impose a penalty of \$200.

Mr. Lee made a motion to find that Steve Collins violated 21-A MRS § 1014(2), by failing to put the necessary disclosure on signs that exceeded a cost of \$100, and to assess a penalty of \$200 for this violation. Mr. Schneider seconded the motion. Motion passed 5-0.

4. Potential Investigation of Working Families PAC

Mr. Lee asked if Diane Russell had been located and if she would participate in the meeting. Mr. Wayne said every effort had been made to contact her, but she had not responded so he did not believe she would participate in the meeting. Mr. Lee said Ms. Russell had, in the past, appeared before the Commission so he had no doubt she was well aware of the proceedings and how to participate.

Mr. Wayne said Diane Russell was a former State Representative and had been a candidate for Governor in 2018 and was very familiar with the requirements to file campaign finance reports. He said her PAC, Working Families PAC, had been regularly filing reports until the PAC's most recent treasurer, Eiranne Hart, resigned this past September. He said the primary concern was that the PAC had not filed its last three campaign finance reports and had not reported its financial activity since late August. He said another concern was that Ms. Hart did not believe the PAC's bank account balance matched what the Commission had on file, but she did not have access to the bank

account to confirm whether there was a discrepancy. Ms. Hart said she would file reports based on information received from Ms. Russell and the PAC's ActBlue account which was used to collect contributions and to which Ms. Hart had limited access. In 2020, Ms. Russell filed the campaign finance reports herself; Ms. Hart did not file them. Mr. Wayne said the Commission staff was asking the Commissioners to authorize an investigation so they could access the PAC's bank account to determine if there had been activity that must be reported. He said they may find that Ms. Hart was right about the PAC being mostly inactive, which would make filing the delinquent reports very easy. Mr. Lee said there were other possible violations: failure to have a treasurer; failure for the principal officer to have a current address on file; and failure to file reports on multiple occasions. He asked if the motion to conduct an investigation should include these other violations. Mr. Wayne said he thought it would be good if the motion contained all the compliance issues.

Mr. Lee made a motion to authorize the Ethics Commission staff to review the transactions on the account and to investigate the failure to have a current address for the principal officer, failure to have a current treasurer for the PAC and the failure to file various financial reports required under law for this PAC. Mr. Schneider seconded the motion. Motion passed 5-0.

5. Proposed Legislation

Mr. Wayne said the Commission, like all state agencies, was authorized to submit legislation, but it had a special authorization under Title 1, § 1009 to review its laws after an election and submit legislation after the usual deadline for state agencies. He said one of the main things the Commission staff wanted to do was simplify the definition of what is a political action committee (PAC) and what is a ballot question committee (BQC). He said they were suggesting putting the definition of a BQC in the definition section of the law and eliminating the separate registration, record keeping and reporting obligations that applied to BQCs. The goal was to have the same registration and reporting requirements apply to PACs and BQCs. He said they proposed eliminating part of the PAC definition that relied on whether an organization's major purpose was to influence a candidate or ballot question election because it added a level of complexity and ambiguity they would like to eliminate. He said the proposed changes would not make it harder to be a PAC or BQC or increase their responsibilities. He said they were suggesting that the organization registering the PAC or BQC have a separate bank account for their election-related activities; the organization could request a waiver to be exempt from this requirement.

Mr. Schneider asked if it made sense to maintain the distinction between PACs and BQCs. Mr. Wayne said the idea of a separate designation, to have an alternative status to a PAC, arose from some litigation 20 years ago. Over the years, the reporting and registration requirements had become very similar. He said he would want to discuss this further with Ms. Gardiner before making the change suggested by Mr. Schneider, but he did believe it was worth considering. Mr. Lee said these two committees had always been confusing and combining them could simplify things.

Ms. Lowry said she thought the proposed streamlining of the requirements was useful and did not stray from the transparency and disclosure purposes of campaign finance law. She thought they should go through the proposal line-by-line, as they had in the past. She believed it was useful to maintain the separate status of PACs and BQCs.

Mr. Hastings asked if this proposal was going to be submitted as proposed or if the staff was going to break it into smaller pieces. He said the definition of a leadership PAC may be seen as controversial. It might be better to put that in its own bill in order to ensure it did not negatively impact the entire bill. Mr. Wayne said he had not considered that but agreed it might be better to separate the items into separate bills. He said in the past, the oversight committee had been very accommodating and would separate out controversial items, so they did not impede passage of other items.

Mr. Marble said he agreed with Mr. Schneider's comments about PACs and BQCs, but leadership PACs were different and should be treated differently. He asked who was meant to be the main beneficiaries of the proposed changes. Mr. Wayne said the ultimate beneficiary of these laws was the public. He said the changes were mostly systemic improvements to make the law clearer for both the Commission staff and the people involved in the political process.

Ms. Gardiner said disclosure was for the benefit of the public and anyone involved in political activity. She said when the bill was considered within the framework of the First Amendment, the intent should be to strive for clarity in the law so that those engaged in political speech and political activity knew what was and was not permitted or what they did and did not have to disclose. It was important to be as clear as possible while making sure that the regulations were not overly burdensome to achieve the governmental interest in informing the public about where the money in political campaigns was coming from and how it was being spent to influence their votes. She recommended that in considering whether to keep the distinction between a PAC and a BQC, they

think in terms of categories of people and associations and what kinds of campaigns they were involved in. She said there were two very different monetary thresholds for PACs and BQCs. It was generally permitted to set a lower monetary threshold for the registration and reporting requirement when candidate elections were involved versus ballot question campaigns, which was why the threshold was so much higher for BQCs – \$5,000 as opposed to \$1,500. Ms. Gardiner said there was no set formula to determine how to draw that distinction, but it should be considered within a First Amendment framework. She said they should also consider how they wanted to regulate the activity of individuals. In the proposal, an individual would not be defined as a PAC but could be defined as a BQC if they were raising money from other people or spending more than \$5,000 on a ballot question campaign. She said they could change that to a reporting system similar to independent expenditure reports in candidate elections. However, she questioned if that would be adequate disclosure if the individual spent money on a regular basis during the campaign. She said an individual was limited in what they could contribute to a candidate, but there was no limit on contributions to a committee to influence a ballot question election. As the Commissioners considered whether to simplify the registration and reporting framework, Ms. Gardiner encouraged them to consider the type of entities affected – corporations, limited liability companies, unincorporated voluntary association, and individuals – and determine the appropriate monetary thresholds.

Mr. Hastings said, as he went through the proposal, there were other miscellaneous changes as well as PAC/BQC changes, which he thought would be better if they were in separate bills. Mr. Wayne said he could separate out the PAC/BQC changes. Mr. Lee said he liked the idea of defining a leadership PAC, but he would put the leadership PAC changes in its own bill rather than risk potentially losing the entire bill because of it. Mr. Hastings commented that the proposed change defined a leadership PAC but did not impose any other rules or restriction. Mr. Wayne said the definition was included because the Commission’s oversight committee had encouraged it.

Mr. Schneider said on page 8, in the definition of “contribution,” there were three kinds of funds listed. He questioned whether paragraphs one and two were necessary because it appeared paragraph three subsumed paragraphs one and two. Mr. Wayne said the Commission staff would prefer to keep paragraphs one and two because in enforcement matters it could be helpful to have something to rely on if there was a dispute over the purpose for money given to a committee. He said a solicitation could be a factor in determining whether a donation was for the purpose of

influencing an election, or whether a contributor earmarked the contribution for a specific purpose. Ms. Gardiner said these definitions had been litigated in state court, federal district court, and the First Circuit Court of Appeals in the National Organization for Marriage case and were upheld. She said there was some benefit to sticking with language that was fully vetted, challenged, and upheld by the courts.

Mr. Hastings asked about the significance of the exempt donor definition on page 9. Ms. Lowry said she also had a question about that definition and the \$100,000 threshold, which seemed high compared to other thresholds. Mr. Wayne said the donor exemption addressed the situation of an organization or individual who only made contributions to a PAC or BQC with their own money. In that situation, it was too burdensome to make that organization or individual register and report as a PAC or BQC.

Mr. Lee asked about the distinction between donating money and not being required to register versus making expenditures for goods and services which would require registration. Mr. Wayne said the reason was that there were organizations that supported or opposed a ballot question and paid their employees to work on a campaign. These organizations generally formed coalitions with a registered PAC or BQC and those services in the form of paid staff would be reported as in-kind contributions to the registered committee. This kind of reporting did not make the information available to the public in an easily accessible or transparent manner. It would be difficult for the public to see the extent of an organization's involvement in a campaign if its activity was only reported as in-kind contributions. He said if an organization was donating more than \$100,000 of services to a PAC or BQC, that would be the threshold for that organization to register with the Commission.

Mr. Hastings asked what the difference was between an organization donating one hundred thousand dollars or \$100,001 in services. He asked if the difference was to identify what the money was being spent on. Mr. Wayne said that was part of it, to provide the public with the details of the expenditures. He said when an organization spent the money on their own employees to work in a coalition or spent money on other goods and services, the organization was acting as a spender, not a contributor. Mr. Schneider said it appeared to him that the difference was that an organization donating goods and services had a closer connection to the issue than simply writing a check to a committee. Ms. Gardiner agreed and said the organization was more in control of how the money was used.

Michael Dunn, Political Committee and Lobbyist Registrar, said the reason there was not a threshold in paragraph A of the exempt donor definition was because of the major donor requirement in § 1060-A which required an organization that contributed over \$100,000 to a PAC or BQC to file a major contributor report.

Mr. Lee said he was impressed with the proposal and was comfortable with leaving it up to the Commission staff on whether they broke it up into smaller pieces or left it as proposed. Mr. Wayne thanked Mr. Lee but said this was a group effort and singled out Mr. Dunn's work on the proposed legislation. Ms. Lowry, Mr. Hastings, Mr. Marble, and Mr. Schneider also expressed their appreciation for the proposal.

Mr. Lee asked what the next step was. Mr. Wayne said there was a February deadline to submit the bill. Mr. Lee asked if they approved this at the January meeting, would that be timely enough. Mr. Wayne said he thought that would be fine and said he wanted to look at the reporting status issue raised by Mr. Schneider, which could make this a much different proposal. Mr. Lee said between now and the January meeting, Mr. Wayne would be looking into breaking the current proposal into a couple of different bills; conferring with Ms. Gardiner about simplifying the registration and reporting framework by having a single status that combined PACs and BQCs; and integrating other suggestions made by the Commissioners.

Other Business: Ms. Gardiner provided an update on the Stop the Corridor lawsuit. She said subsequent to the October 30 meeting, Stop the Corridor had filed a motion for a stay of the investigation or, in the alternative, a motion to modify the subpoena. The Superior Court heard oral arguments on Monday of this week. On Thursday, the judge had explained that he was going to provide a brief decision and follow-up with a more complete decision. The decision was to deny the stay and the alternative request to modify the subpoena. The Court looked at the subpoena and found it reasonable and was not inclined to change anything. Ms. Gardiner said they did not have the full decision on the Rule 80C petition but the brief decision issued by the Court affirmed the decision of the Commission to undertake an investigation to determine whether Stop the Corridor qualified as a BQC and denied their appeal; a further order would be issued with respect to the appeal. She said she did not know if Stop the Corridor intended to appeal this decision to the Law Court.

Adjournment

Ms. Lowry made a motion, seconded by Mr. Hastings, to adjourn. The motion passed. The meeting adjourned at 11:30 a.m.

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