



Minutes of the July 30, 2021 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.; Sarah LeClaire, Esq.; Dennis R. Marble; and William J. Schneider, Esq.

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

Commissioner Lee convened the meeting at 10:02 a.m. The meeting was livestreamed via YouTube. The Commission considered the following items:

1. Ratification of the May 26, June 11, June 18 and June 30, 2021 Meeting Minutes.

Mr. Lee moved to adopt the Minutes of all four meetings; Mr. Schneider seconded the motion. Motion passed 5-0.

2. Compliance Review – One Maine PAC

Mr. Dunn presented four issues, based on his review of this PAC.

1. A payment amount that appeared to be reported incorrectly, which was resolved when the PAC provided additional information.
2. A failure to update the PAC registration after the PAC changed banks. Mr. Dunn recommended the Commission find a violation but not impose a penalty because the bank account information is not available to the public.
3. A discrepancy between the PAC's actual bank balance and the calculated balance in the financial activity summary of the campaign finance report. The two balances should match because all contributions and expenditures should be made from the PAC account and reported in campaign finance reports. Mr. Dunn recommended the Commission not find a violation but authorize him to work with the PAC to resolve the discrepancy. Under the Commission's current policy, authorization is required by the Commission when the amount in error is over \$1,000.
4. A late-filed independent expenditure (IE) report. Mr. Dunn and Mr. Wayne expressed different viewpoints on reporting requirements for the PAC after it received a quote or invoice showing a total due of \$8,283.54 on September 22, 2020 for design work for 20,000 postcards to support multiple candidates. Mr. Dunn said the Commission staff has

interpreted the statute to mean that the date of the reportable expenditure is when the PAC made an obligation. In this case, Mr. Dunn believed an IE report should have been filed when the PAC made the obligation and the PAC should have amended the report once it had finalized the details of the mailing. Mr. Wayne believed it would be unfair to expect the PAC to file an IE report in late September when it did not have a basis to believe it would spend more than \$250 to promote a specific candidate, and when the cost per candidate could not be ascertained.

William Thompson, Treasurer for One Maine PAC, appeared before the Commission. Mr. Thompson said the PAC was waiting for the final invoice before filing the IE report. He presented copies of internal emails that detailed the process of the expenditure and how it changed from the initial obligation to the final mailing, including the addition of candidates between the September 22, 2020 quote/invoice and the final mailing.

Commissioners discussed the difficulties in administering the requirement to report expenditures which include promises or agreements to pay for campaign goods or services, and whether receiving a quote constituted an obligation or expenditure. They agreed the Commission staff should develop guidance for PACs concerning entering into contract discussions and entering into obligations requires the filing of an IE report when the final details of a communication are still not determined.

Mr. Lee moved to find that One Maine PAC did not violate the independent expenditure reporting requirements; Mr. Schneider seconded the motion. Motion passed 5-0.

Mr. Lee moved to find a violation of 21-A M.R.S. § 1052-A(3)(E) for failure to file a notice of change of financial institution within 10 days of making that change; Mr. Schneider seconded the motion. Motion passed 5-0.

Mr. Lee moved to impose no financial penalty for that violation; Mr. Schneider seconded the motion. Motion passed 5-0.

3. Compliance Review – Charlotte PAC

Mr. Dunn presented six issues found during his review of Charlotte PAC and recommended a total of \$400 in penalties.

1. A failure to maintain receipts accounting for 33% of the total number of receipts the PAC was required by law to keep. Although the PAC submitted some of the receipts, most were still missing and several were not retained at the time of the expenditures.
2. A contribution that was apparently misreported as from Drummond Woodsum. A check from the Bangor Residence Inn made out to the candidate account was presented for this transaction, rather than a check from Drummond Woodsum.
3. An unreported contribution to a municipal candidate. The PAC said it could not report it because the e-filing system would not allow them to enter the contribution. If the PAC had contacted the Commission, the staff could have advised how to report it.
4. An unreported contribution from the Maine Bankers Association.
5. A contribution received from a registered lobbyist on the first day of the legislative session. The PAC explained Rep. Warren met the lobbyist for breakfast, before the session started. The Commission staff accepted the explanation, so this issue was resolved.
6. The PAC paid two months of the Principal Officer's personal cell phone bill. In response to the audit, the officer reimbursed the PAC for this expense.

Mr. Lee moved to accept the staff recommendation to impose a financial penalty of \$250 for failure to keep receipts as required by statute; Mr. Marble seconded the motion. Motion passed 5-0.

Mr. Lee moved to accept the staff recommendation to impose a financial penalty of \$150 for failure to report transactions to Bangor Residence Inn, Maureen AuCoin, and Maine Bankers Association; Mr. Marble seconded the motion. Motion passed 5-0.

4. Compliance Review – Shiretown PAC

Mr. Dunn said this was a new PAC in 2020 that had limited experience with campaign finance reporting. He found three issues during his review. He recommended the assessment of penalties totaling \$1,500.

1. The PAC filed its registration form two days late.
2. The initial campaign finance report filed by the PAC did not substantially conform to the disclosure requirements because the reported dates for several transactions were incorrect.
3. Multiple transactions that were omitted.

Commissioners discussed the inexperience of the PAC officers and the amount of PAC's overall financial activity compared to the recommended penalties.

Mr. Lee moved to find that Shiretown PAC omitted transactions in violation of 21-A M.R.S. § 1004-A and to impose a \$250 penalty; Mr. Marble seconded the motion. Motion passed 5-0.

Mr. Lee moved to find that the initial campaign finance report was substantially non-compliant in violation of 21-A M.R.S. § 1062-A(2) and to impose a penalty of \$250; Mr. Schneider seconded the motion. Motion passed 5-0.

Mr. Lee moved to find a late registration in violation of 21-A M.R.S. § 1062-A(1) and to impose a penalty of \$250. Motion withdrawn.

Mr. Lee moved to find that Shiretown PAC violated 21-A M.R.S. § 1062-A(1) by registering two days later than required by law; Mr. Schneider seconded the motion. Motion passed 5-0.

Mr. Schneider moved to impose a \$100 penalty for the late registration; Mr. Hastings seconded the motion. Motion passed 5-0.

5. Compliance Review – Star City PAC

Mr. Dunn found one issue of concern – the PAC had not reported a payment of \$250 made in February 2020. PAC officers could not explain the purpose of the payment. Mr. Dunn recommended a finding of violation but no penalty because either the PAC failed to report an expenditure or failed to maintain records sufficient to identify the withdrawal.

Mr. Lee moved to accept the staff recommendation to find that the PAC violated 21-A M.R.S. § 1060(7) by not reporting a February 20, 2019 payment of \$250, and to not impose a financial penalty for that violation; Mr. Marble seconded the motion. Motion passed 5-0.

6. Compliance Review – Committee for Peace and Justice

Mr. Dunn found one issue of concern – the PAC accepted a contribution from a registered lobbyist. In 2020, a new law went into effect that restricted contributions by lobbyists after the legislative session. Mr. Dunn recommended a finding a violation but no penalty because the PAC provided proof that it returned the contribution.

Mr. Lee moved to accept the staff recommendation that the Committee for Peace and Justice violated 21-A M.R.S. § 1015-A(3) by accepting a \$75 contribution from a registered lobbyist and impose no financial penalty because it was a relatively small amount, was reported, and the money had been returned; Mr. Hastings seconded the motion. Motion passed 5-0.

7. Update on Audits of 2020 Maine Clean Election Act Candidates

Jennifer Connors from the accounting firm of Runyon Kersteen Ouellette appeared before the Commission to present results of 29 audits of Maine Clean Election Act candidates. Ms. Connors explained the audit process and answered questions from the Commissioners. She said 15 of the reports contained no findings or exceptions, 13 contained only exceptions and one report contained a finding of violation. She said audits were continuing for the remaining 11 candidates selected for audit.

8. Proposed Investigation – Alpine Initiatives LLC

Mr. Wayne said Alpine Initiatives was a limited liability company that was registered with the Secretary of State for approximately 14 months beginning in October 2018. It made a \$150,000 contribution to the Maine Democratic Party on October 29, 2018, which was four days after it had registered as an LLC. Commission staff researched but could not find any commercial activity by Alpine Initiatives that would have generated that income. Mr. Wayne said the circumstances suggest the potential that a source may have provided money to Alpine Initiatives for the purpose of making a contribution to a political party. If so, Alpine Initiatives may have been required to register with the Commission as a PAC.

The Commissioners discussed whether Alpine Initiatives may have qualified as a political action committee. Mr. Lee moved to request the Commission staff to investigate Alpine Initiatives LLC or any other person associated with this financial activity in violation of Maine campaign finance law, 21-A M.R.S. §§ 1001-1105; Mr. Schneider seconded the motion. Motion passed 5-0.

9. Policy on Remote Participation in Commission Meetings

The Commission staff presented a draft policy on Remote Participation in Commission Meetings for the Commission's review. Commission staff reported that the only written comments received on the draft policy was a letter from the Maine Citizens for Clean Elections (MCCE), which suggesting a change to section five of the draft policy. Mr. Bolton said he did not believe the proposed change would have a substantial effect on the proposed policy.

The Commissioners discussed: maintaining the livestreaming of meetings for the public to access; providing accessibility for people who want to participate in a Commission meeting but are unable to attend in person; and enabling Commissioners who could not travel due to weather to participate remotely.

Mr. Lee moved to adopt the policy as presented; Mr. Schneider seconded the motion. No vote taken on motion.

Mr. Lee moved to amend the policy to substitute the 1st paragraph of subsection 5 in the letter submitted by MCCE for the 1st paragraph in section 5 of the policy presented to the Commission; Mr. Schneider seconded the motion. Motion passed 5-0.

Mr. Lee moved to adopt the amended policy; Mr. Marble seconded the motion. Motion passed 5-0.

10. Discussion of Procedures for Waiving Late-Filing Penalties

Mr. Wayne discussed Commissioner Marble's request earlier this year for information regarding the procedures for waiving late-filing penalties. He said the Commission staff is comfortable continuing to use the current procedures but had worked on an outline for other procedures if the Commission wished to move in a different direction.

Commissioners discussed the importance of being consistent in handling late-filing waivers, and agreed the current procedures were working well and they could revisit this issue in the future.

11. Question on Confidentiality in Litigation

Mr. Bolton said there was a possibility the Commission could initiate litigation to enforce an investigative subpoena to produce records. Mr. Bolton proposed providing the entity whose records were sought with advance notice that the Commission would be filing suit, in case the entity wished to file a motion with the court to preserve its anonymity. The Commissioners agreed with that proposal. Scott Thistle, a reporter with the Portland Press Herald, expressed concern the Commission was protecting an entity that was trying to influence an election, rather than protecting the public interest. Mr. Bolton explained that the entity had requested confidentiality during the Commission's investigation, and the Commission agreed the entity had made a plausible claim for confidentiality. Commissioners noted that the court would decide on any motion by the defendant or respondent to keep its name confidential. Mr. Lee expressed it would be reasonable to provide the public with notice of the litigation to allow the public to intervene in the matter. Ms. LeClaire said it was important for the public to know of the Commission's involvement in litigation specifically when this issue of confidentiality has been raised.

Adjournment

Mr. Marble moved, seconded by Mr. Lee, to adjourn. The motion passed. The meeting adjourned at 2:25 p.m.

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