



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

Approved 7/27/2022

Minutes of the June 22, 2022 Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: William J. Schneider, Esq., Chair; David R. Hastings, Esq.; and Dennis R. Marble

Participating via Zoom: Stacey D. Neumann, Esq.; Sarah E. LeClaire, Esq.

Staff: Jonathan Wayne, Executive Director; and Jonathan R. Bolton, Assistant Attorney General

The meeting convened at 9:04 a.m. and was livestreamed via YouTube.

The Commission considered the following items:

1. Ratification of the Minutes of the April 27, May 6, May 11 and June 9, 2022 Meetings

Mr. Marble moved to adopt the minutes. Mr. Hastings seconded the motion. Motion passed 5-0 for the May 6 and May 11 minutes. Ms. Neuman abstained for the April 27 and June 9 minutes, as she was not present for those meetings. Motion for those minutes passed 4-0.

2. Request for Waiver of Late-Filing Penalty – Hon. Paul R. LePage

Mr. Wayne stated Mr. LePage was required to file a campaign finance report 42 days before the primary election on May 3, 2022. The report was not filed until May 4 at 4:50 a.m., resulting in a preliminary penalty of \$9,041.83 for which the campaign is seeking a waiver. Commission staff recommended a penalty of at least \$3,000.

Mr. Joshua Tardy, Esq. appeared on behalf of the campaign. He said that Mr. LePage is running a sophisticated campaign with a professional staff and regrets that a mistake occurred in this case. He expressed that the \$3,000 recommended penalty was high and, as precedent, referred to two \$500 penalties assessed against former gubernatorial candidates James Boyle and Mark Eves.

Mr. Wayne said that while Mr. Boyle and Mr. Eves were both candidates for the Democratic nomination for Governor in 2018, they had small campaigns. Due to the size of their campaigns, the penalties were reduced to \$500.

Mr. Schneider moved that the campaign violated 21-A M.R.S. § 1017(2)(B) when it failed to file the statutorily required report by the deadline. Ms. Neumann seconded the motion. The motion passed 5-0.

Mr. Schneider moved to assess a penalty of \$3,000 under 21-A M.R.S. § 1020-A(4)(A). Ms. Neumann seconded the motion. The motion passed 5-0.

3. Request for Waiver of Late-Filing Penalty – Ethan Alcorn

Mr. Wayne stated Mr. Ethan Alcorn was required to file a campaign finance report on May 3, 2022 but did not file it until May 4. Mr. Alcorn is seeking a waiver of the \$200 penalty for the late filing.

Commission staff does not recommend a waiver.

Mr. Alcorn submitted his candidate registration on March 31, and he was sent an email that day with his username for this election year and a link to set up his password. That same day, Lorrie Brann sent him an email requesting that he log in to his account.

Mr. Alcorn responded to a reminder email about the filing deadline on May 3 that he would file it by midnight. When he attempted to log in later that evening, he was locked out. This may have occurred because he failed to use his 2022 login credentials. He said that he did his part by attempting to file his report and sought a waiver due to the size of his campaign.

Mr. Schneider moved to find that the campaign violated 21-A M.R.S. § 1017(2)(B) when it failed to file the statutorily required report by the deadline. Mr. Hastings seconded the motion. The motion passed 5-0.

Mr. Schneider moved in accordance with 21-A M.R.S. § 1020-A(4)(A) to assess a penalty of \$200 for the late filing of the 42-Day Pre-Primary Report. Mr. Marble seconded the motion. The motion passed 5-0.

4. Request for Determination that Advertising Costs are not an Independent Expenditure – Brookfield White Pine Hydro LLC

Mr. Wayne stated an Independent Expenditure (IE) Report may be required if an organization is spending money on a paid communication to advocate for or against candidates. An IE Report must be filed when a communication expressly advocates for the election or defeat of a candidate. During the 28 days before the primary election, and between Labor Day and the general election, any communication disseminated that names or depicts a clearly identified candidate is considered to be an IE and a report must be filed, unless there is a demonstration to the Commission that the expenditure was not intended to influence the election.

Mr. Wayne said Brookfield White Pine Hydro LLC (BWPH) began running a video ad and a radio ad urging Governor Mills to support the relicensing of the Shawmut Dam in Fairfield. BWPH has stated the company had no intention to influence the primary election. Mr. Wayne stated that since Governor Mills is running unopposed in the primary election, the explanation seems plausible to the Commission staff.

Mr. Daniel Walker, Esq., appeared for BWPH and explained that he had several discussions with Commission staff regarding these communications, and the ads were not disseminated until after the primary. The radio ads began airing on June 16 and are planned to run through the summer and into the fall. BWPH knew the ads would identify Governor Mills but stated the purpose of these communications was solely to influence BWPH's pending application for water quality certification for the Shawmut Hydroelectric project, which has been ongoing for at least a year. Although the communication explicitly mentions Governor Mills in her official capacity, it does not mention her as a candidate or the election. For these reasons, Mr. Walker requested the Commission support the staff's recommendation that the advertising costs were not IEs.

Mr. Schneider moved in accordance with 21-A M.R.S. § 1019-B that the communications were not independent Expenditures and that the BWPH has rebutted any presumption that it was. Mr. Hastings seconded the motion. The motion passed 5-0.

5. Request for Determination that Advertising Costs are not an Independent Expenditure – Planned Parenthood Maine Action Fund

Mr. Wayne stated that Planned Parenthood Maine Action Fund (PPMAF) had run radio and video ads within the 28 days before the June 14 primary election that mentioned Governor Mills and the upcoming Dobbs decision by the U.S. Supreme Court. The ads encouraged constituents to contact Governor Mills to thank her for her support on the issue. Governor Mills was unopposed in the primary election. The Commission staff recommended a determination that the costs of these communications were not incurred to influence the primary election.

Ms. Katherine Knox, Esq. appeared for PPMAF and stated the organization was anticipating a Supreme Court opinion in the Dobbs case regarding the constitutional right to abortion. The advertisements began running at the end of May and are scheduled to end on June 30. PPMAF will not be running ads prior to the general election. Ms. Knox explained that the goal of these ads is exclusively to influence Governor Mills in her role as the chief executive.

Mr. Schneider moved in accordance with 21-A M.R.S. § 1019-B that these ads were not independent expenditures, and that the organization had rebutted any presumption that it was. Mr. Marble seconded the motion. The motion passed 5-0.

6. Request for Determination that Mailing Costs are not an Independent Expenditure – U.S. Term Limits

Mr. Wayne said U.S. Term Limits (USTL) requested a determination that mailings it had sent before the June 14, 2022 primary election were not independent expenditures. USTL is a national organization that advocates for congressional term limits through a constitutional convention. It sent mailings in seven legislative districts within the 22 days before the primary election naming nine different Republican candidates in contested races for the Maine House of Representatives and Senate.

Mr. Zachary M. Wallen, Esq., appeared on behalf of USTL to request a determination from the Commission that USTL's mailers are not IEs. He explained that USTL seeks grassroots support from constituents to encourage candidates and officeholders to pledge to support congressional term limits in office. Mr. Wallen stated the mailers did not contain any advocacy regarding the election, which is consistent with USTL's mission to drive engagement on the term limits issue, rather than the election or defeat of any candidate. He also explained that the mailers were sent out after the end of the legislative session because USTL's research demonstrates it can achieve the most engagement from constituents during this period. Recipients of these mailings were registered Republicans based on a vendor decision, but that is consistent with USTL's experience that candidates are most responsive to hearing from constituents in their own party. He said the U.S. Supreme Court has recognized a distinction between pure issue advocacy and express advocacy. USTL believes its mailings are issue advocacy.

Following Mr. Wallen's presentation, the Commissioners asked questions concerning USTL's mailings. Commissioner Hastings asked whether identifying candidates who would be helpful to USTL's cause and helping get them elected was a primary reason for these mailings. Mr. Wallen replied that these mailings were issue advocacy.

Commissioner LeClaire sought a confirmation from Mr. Wallen whether the mailings were sent to foster a dialogue with constituents. Mr. Wallen confirmed that was the intent. Commissioner LeClaire asked: since candidate John Andrews was described in the mailings as a leader in the fight for congressional term limits, did he need a dialogue with his constituents? Mr. Wallen replied that an ongoing dialogue is necessary. As an example, he said that U.S. Senator Susan Collins had pledged to support term limits in the early 1990s. In spite of her strong advocacy for Maine, she has not adhered to the pledge. Just because a pledge has been signed in the past does not mean that it will continue to be supported by an elected official. Commissioner LeClaire then asked whether it would behoove USTL to have someone reelected who supports term limits? Mr. Wallen replied that he supposed that it did.

Commissioner Hastings commented that if these mailings were sent outside the IE window then there would be no problem. However, they were sent within the IE window which is why there is language in the law that addresses this. Naming a candidate can have an impact on voting during this period. USTL would like these candidates to be elected to support their position in the Legislature to promote their efforts for term limits. Commissioners Schneider, LeClaire and Neumann expressed agreement with Commissioner Hastings' comments.

Mr. Schneider moved that USTL has not demonstrated by a preponderance of the evidence that the expenditures were not IEs. Mr. Hastings seconded the motion. The motion passed 5-0. Mr. Schneider encouraged USTL to work with Commission staff to get the necessary filings submitted.

7. Investigation of Software Provided by the American Legislative Exchange Council

Mr. Wayne provided the Commission with an update on the investigation into software that the American Legislative Exchange Council (ALEC) provides to its legislative members. A July 2021 complaint from the Center for Media and Democracy (CMD) asserted that the software violated state limits and restrictions on contributions. ALEC maintains that it provides the software to assist its members in managing relations with constituents. In September 2021, the Commission authorized staff to investigate CMD's complaint. On May 18, 2022, Commission staff participated in a demonstration of the software by ALEC. Mr. Wayne offered a view on behalf of the Commission staff that it is possible that a legislator could use the ALEC CARE software for managing constituent relations, but the software would probably have more value as a tool for campaigning if an ALEC member were to disregard ALEC's restriction against campaign use. Mr. Wayne advised the Commissioners that the staff could continue with the investigation, but it may require use of the agency's subpoena power to obtain more information. Mr. Wayne's recommendation was to discontinue the investigation. Commission Chair William Schneider moved to discontinue the investigation, but no vote was taken on the motion. After further discussion, Commission members agreed they were not prepared to vote on a formal motion on this matter and would like to continue it until the next meeting. During the Commissioners' discussion, Commissioner Sarah LeClaire expressed some reservations that discontinuing the investigation could lead to an inference that the Commission concluded the software had no value or that it was appropriate for candidates to access the software for campaign purposes. Mr. Schneider moved to continue the matter until next month's Commission meeting. Mr. Marble seconded the motion. The motion passed 5-0.

Other Business

Mr. Wayne reported back to the Commission on an online commentary by a former State Senator questioning the accuracy of lobbyist reports. The Commission staff had contacted the three lobbyists who filed the reports and received explanations of the reporting. Some of the reports were amended. The Commission took no further action on this item

Adjournment

Mr. Hastings made a motion, seconded by Mr. Marble, to adjourn. The motion passed 5-0. The meeting adjourned at 11:47 a.m.

Respectfully submitted,

/s/

Jonathan Wayne, Executive Director