



Minutes of the November 29, 2023 Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: William Schneider, Esq., Chair; Dennis Marble; David Hastings, Esq.; Stacey Neumann, Esq.; and Sarah LeClaire, Esq.

Staff: Jonathan Wayne, Executive Director; and Jonathan R. Bolton, Assistant Attorney General
Commissioner Schneider convened the meeting at 9:00 a.m.

1. Ratification of the Minutes of the October 25, 2023 Meeting

Mr. Marble moved to ratify the October 25, 2023 minutes. Ms. Neumann seconded the motion. The motion passed 5-0.

2. Public Hearing on Rulemaking

On October 31, 2023, the Commission invited comments on proposed amendments to the Commission's rules. Mr. Schneider opened a public hearing to receive comments on the amendments.

Mr. William Hayward, on behalf of Maine Citizens for Clean Elections, expressed support for proposed rule changes regarding independent expenditures. He said that shifting the language of the rule to focus on the effect of a communication, rather than trying to determine the spender's subjective intent, made the law more effective and reflects how money influences elections.

3. Investigations of Alpine Initiatives LLC and Stop the Corridor

This item consisted of two enforcement matters concerning Clean Energy for ME, LLC (d/b/a Stop the Corridor) and Alpine Initiatives LLC, which the Commission directed staff to investigate on March 10, 2020 and July 30, 2021. Two procedural issues were discussed at the beginning of this item. Mr. Schneider said part of the Commission's consideration of these matters may proceed in executive session when the discussion involves confidential working papers. Mr. Bolton explained that the respondents had requested the identity of the ultimate funder of the

financial activity be kept confidential during the meeting because the funder's identity is politically sensitive. Respondents requested the funder be referred to as "the client."

Mr. Wayne summarized the history of the investigations. After Commission staff completed investigative reports earlier in 2023, staff entered into negotiations with the respondents about potential consent agreements as an alternative resolution. After the Commission's October 2023 meeting, Mr. Bolton circulated updated draft consent agreements that included changes requested by the Commission. The respondents agreed to some of the changes but remained uncomfortable with identifying the funder by name in the agreements.

Prior to the November 29, 2023 meeting, staff had provided the Commission with versions of the consent agreements that would be acceptable to respondents. Mr. Bolton explained if the Commission entered into the consent agreements as presented, the identity of the client would be disclosed in the campaign finance report attached as Exhibit B to the Stop the Corridor consent agreement but would not be named in the body of the agreements.

Mr. Paul McDonald, Esq. of Bernstein, Shur, Sawyer and Nelson ("Bernstein Shur") appeared, representing Stop the Corridor. He stated the client should not be identified because it was unnecessary and unfair. The client retained communication and public policy consultants to oppose the corridor with explicit instructions to take no action that would require the client's disclosure. He said the client has a First Amendment right to engage in political speech and remain anonymous, so long as campaign finance laws did not require disclosure. Although the client would be disclosed in the campaign finance report attached to the Stop the Corridor agreement, respondents believed it was unfair to require the client to be named in the agreements as it would be unnecessarily punitive and would cause reputational harm. Mr. McDonald confirmed that the client referred to in the Alpine Initiatives agreement is the person identified as the contributor in the campaign finance report attached as Exhibit B to the Stop the Corridor agreement.

Ms. Neumann expressed concern about the precedent that future parties in enforcement proceedings could ask not be identified by asserting that professionals they hired were responsible for the violation. Mr. James Monteleone, Esq. of Bernstein Shur said that in the records of the Stop the Corridor investigation there was not a single example of the client directing the conduct that was at issue in the consent agreement. Regarding the Alpine Initiatives investigation, he said there was no evidence that the client had any knowledge that the action was being taken.

Ms. LeClaire asked who the client relied on to make decisions. Mr. McDonald replied Bernstein Shur and Stop the Corridor, whom they hired for legal assistance and political consulting services. Ms. LeClaire said reliance on advice of counsel is recognized in the law but was not a free ticket, and each case should be analyzed according to the facts. Mr. McDonald responded Bernstein Shur had learned valuable lessons through this process and others could benefit from the cautionary tale these agreements would tell. The consultants were not hired to provide cover for reportable activities and, on several occasions, they advised the client not to take actions that would require reporting.

Mr. Bolton stated that references to the client in the consent agreements were a highly negotiated aspect of the discussions. Both sides put in effort to reach a mutually acceptable conclusion. From his perspective, the fact the client would be identified in the attached campaign finance report was crucial and something staff requested.

Mr. Mark Terison, Esq., a contract attorney that had been engaged for this matter to provide legal advice to the Commission, said that the respondents waived their rights to object to any *ex parte* communication that Mr. Bolton might have with the Commission during an executive session. Mr. McDonald confirmed the waiver was still active and they endorsed Mr. Bolton's participation throughout the meeting.

Mr. Newell Augur, Esq. of Pierce Atwood spoke on behalf of Clean Energy Matters and asked the Commission to act transparently in considering the investigations.

Ms. Neumann moved to go into executive session pursuant to 1 M.R.S. § 405(6)(E) and (F) and 1 M.R.S. § 1005 for the purpose of discussion and permitted deliberation regarding the investigative working papers of the Commission made confidential by 21-A M.R.S. § 1003(3-A). Mr. Hastings seconded the motion. The motion passed 5-0 at approximately 11:55 a.m.

The Commission met in executive session until 1:05 p.m., when it reconvened in public session.

Mr. Schneider moved to accept and approve the consent agreements negotiated between the Commission and respondents and for the Commission to authorize the chair to sign the agreements on behalf of the Commission. The motion was seconded by Ms. Neumann. The motion passed 5-0.

4. Late Notice by Maine Energy Progress PAC to a Major Contributor

Mr. Wayne explained the disclosure requirements for “major contributors.” Those are donors that give more than \$100,000 to a political action committee (PAC) or a ballot question committee (BQC) to influence a ballot question. As part of the requirements, a PAC or BQC must notify the major contributor in writing about their obligation to file a major contributor report. Mr. Wayne said the Commission staff was inclined in the future to use \$5,000 as a baseline penalty when a PAC or BQC does not provide timely notice to its major contributors or when a major contributor files a report late.

Mr. Wayne said Maine Energy Progress received contributions from Versant Power totaling \$257,688.68 as of October 19, 2023 to oppose Question 3. This required the BQC to send a major contributor notice to Versant Power by October 24, but the BQC sent the notice three days late on October 27. The preliminary penalty for sending the notice late was \$25,768.87 (10% of the contribution it received from Versant Power). The BQC requested a waiver of the penalty. The staff recommended reducing the penalty to \$3,000 to reflect the BQC acted responsibly once it realized error and arranged to have the notice sent to the contributor. Ms. Emma Burke, Political Committee & Lobbyist Registrar, said the BQC raised millions of dollars, and the contribution from Versant Power represented a small percentage of the total funds the BQC received, accepted, and expended.

Ms. Kate Knox, Esq. of Bernstein Shur, representing Maine Energy Progress, explained this was a mistake discovered when preparing the October report amid \$16,000,000 in financial activity during that period. The BQC self-reported the error to staff and quickly rectified it.

Mr. Hastings moved to reduce the penalty to \$3,000. Ms. LeClaire seconded the motion. The motion passed 5-0.

5. Late Major Contributor Report – Genuine Parts Company (NAPA)

Ms. Burke reported that a representative of Genuine Parts Company intended to participate in the meeting but was unable because of the timing of when the Commission reached this item. The Commission postponed the company’s waiver request until the next Commission meeting.

6. Late Major Contributor Report – Dorman Products

Mr. Wayne explained that in early 2023 Dorman Products contributed \$150,000 to promote the Maine Right to Repair initiative requiring it to file a major contributor report with the Commission by October 5, 2023, but it was filed 18 days late on October 23rd. The preliminary penalty for the late filing was \$15,000 (10% of the \$150,000 contribution). Dorman Products

requested a waiver of the penalty and staff recommended a reduction to \$5,000. The company was invited to participate in the meeting but did not appear.

Mr. Schneider moved to reduce the penalty to \$5,000. Mr. Marble seconded the motion. The motion passed 5-0.

7. Late Notices to Major Contributors – Maine Automotive Right to Repair Committee (MARTR)

Mr. Wayne explained that from May to September 2023, the Maine Automotive Right to Repair ballot question committee (MARTR) received contributions exceeding \$100,000 from six contributors. It was required to send notices to the major contributors during May 10 - September 6, 2023, and send copies to the Commission. The BQC was late in sending five of the notices to the contributors. Most of the notices were sent to contributors one to four weeks late, and one notice was sent more than three months late. The BQC was also late sending six copies of the notices to the Commission. The preliminary penalties for the late notices total \$240,000 (10% of the six contributions). The BQC requested a waiver of the penalties, and the staff recommended a reduction to \$55,000.

Ms. Adrienne Fouts, Esq. of Drummond Woodsum stated the BQC took responsibility for the errors and there was no intent to hide information. She explained Ms. Jennifer Bonarrigo, treasurer for MARTR, had never worked on a Maine initiative and was unfamiliar with the reporting requirements.

Ms. LeClaire asked if any of the late notices caused the major contributor reports to be filed after the election, to which Ms. Fouts replied they did not. She asked the Commission to consider a reduction to \$35,000.

Mr. Newell Augur, on behalf of Automakers and Repairs for Vehicle Repair Choice, said the staff was recommending a \$185,000 reduction in the preliminary penalty and urged the Commission not to reduce the penalty below the staff recommendation of \$55,000.

Mr. Marble moved to reduce the penalty to \$55,000. Ms. LeClaire seconded the motion.

Ms. Neumann moved to amend the motion to reduce the penalty to \$35,000. Mr. Schneider seconded the motion. The motion passed 5-0.

8. Audits of Maine Clean Election Act (MCEA) Candidates

The Commission audits a random selection of 20% of legislative candidates who participate in the MCEA program. Ms. Jennifer Connors of Runyon Kersteen Ouellette provided an update on the completed 2022 audits. Of the 42 audited candidates, 20 had no exemptions or findings. There were 58 exceptions found, which were minor errors and omissions, not violations of the law. The most common exceptions included obligations that were not reported as unpaid debts on campaign finance reports, and missing documents. Candidates tend to report their expenditures based on when they pay invoices or when their payments clear the bank as opposed to when they enter an obligation. There were four findings, which were more serious and included issues such as making an expenditure on behalf of another candidate, an excessive purchase not traditionally necessary for a legislative campaign, and not submitting qualifying contributions to the Commission.

Executive Session - Potential Litigation

Mr. Schneider moved to go into executive session pursuant to 1 M.R.S. § 405(6)(E) and 1 M.R.S. § 1005 to consult with the Commission counsel concerning contemplated litigation against the Commission. Mr. Marble seconded the motion. The motion passed 5-0 at approximately 1:09 p.m. The Commission met in executive session until 1:28 p.m., when it reconvened in public session.

Adjournment

Mr. Hastings made a motion to adjourn. Mr. Marble seconded. The motion passed 5-0. The meeting adjourned at 1:28 p.m.

Respectfully submitted,

Jonathan Wayne, Executive Director